

1 Q. Do you recall whether you saw multiple -- testimony
2 from multiple caregivers about a variety of activities that
3 would take place daily in the Memory Care Unit?

4 A. I don't know about variety, but there were some
5 activities that people talked about doing.

6 Q. Have you -- in stating your opinions here, are you
7 aware of any testimony that a witness observed the care
8 staff at Emerald Hills spending hours with Ms. Boice in her
9 room?

10 A. No.

11 Q. Would that be consistent with your opinions in this
12 case?

13 A. Someone spent hours with her at any one time? It's
14 not inconsistent.

15 MR. REID: That's all the questions I have. Thank
16 you.

17 THE COURT: Anything else, Miss Clement?

18 MS. CLEMENT: No, your Honor.

19 THE COURT: All right. May we excuse this witness?

20 MS. CLEMENT: Yes.

21 MR. REID: Yes, your Honor.

22 THE COURT: Thank you very much. You're excused.

23 THE WITNESS: Thank you.

24 THE COURT: Who is our next witness?

25 MS. CLEMENT: Eric Boice, your Honor.

26 THE COURT: Terrance, can I give you this.

27 Mr. Boice, as you've observed, if you would remain
28 standing when you get to the witness stand, raise your

1 right hand, and face the clerk.

2 THE CLERK: Do you solemnly swear the testimony you
3 are about to give in the cause pending before this Court
4 will be the truth, the whole truth, and nothing but the
5 truth?

6 THE WITNESS: I do.

7 THE CLERK: Have a seat, please.

8 THE WITNESS: Thank you.

9 THE CLERK: Sir, can you state your name and spell
10 it for the record.

11 THE WITNESS: Sure. My first name is Eric, E-R-I-C.
12 My last name is Boice, B-O-I-C-E.

13 THE CLERK: Thank you.

14 MS. CLEMENT: Thank you, your Honor.

15 TESTIMONY OF

16 ERIC BOICE, a witness called by the Plaintiffs:

17 DIRECT EXAMINATION

18 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
19 the Plaintiffs:

20 Q. Eric, can you please share with the jurors a little
21 bit about your education background.

22 A. Um, I graduated from high school in 1983. I went to
23 one year of community college right after that. Um, went
24 to work full time for a couple years. It was important to
25 my mom to go back to school, so I went back and finished my
26 associate's degree in 1987.

27 And then in 2011, mainly -- or I would say the
28 biggest impetus was my mother, to finish school. She had a

1 dream for all of us to, at the very minimum, get a
2 bachelor's degree. And I finished that in August of 2012.

3 Q. And are you currently in school now?

4 A. I am.

5 Q. And what are you studying?

6 A. Now I'm working towards a Master's Degree in
7 Nursing.

8 Q. And what has compelled you to be interested in
9 nursing?

10 MR. REID: I'm going to object, your Honor.
11 Relevance. 352.

12 THE COURT: He can answer.

13 THE WITNESS: Um, I think my whole life has been
14 directed towards helping people, trying to do that. I
15 think part of it is because of this case, because of what
16 happened to my mother. But wanting to help people is where
17 I'm trying to go.

18 Q. (By MS. CLEMENT) So can you tell the jurors about
19 what your first job was when you got out of school, for the
20 first time.

21 A. My first job. Like out of high school?

22 Q. Well, maybe not out of high school, if it was Burger
23 King. I don't know.

24 (Laughter.)

25 THE WITNESS: Oh, okay. My first significant -- or
26 the job that I left -- after my first year of college, I
27 became a campus supervisor at a high school, which was kind
28 of like a plain clothes, security-type job.

1 Q. (By MS. CLEMENT) And where was this? Where did you
2 grow up?

3 A. I grew up in the Bay Area, in the East Bay Area, a
4 little town called San Lorenzo. Most of you would probably
5 know -- kind of between Oakland and Hayward.

6 Q. And after you got your AA degree in 1987, what did
7 you start doing for work?

8 A. Well, if I jump ahead a little bit, in 19 -- in
9 1989, I was offered a position as a police officer. I
10 started work as such in 1990. In February of '90, I
11 started the academy.

12 Q. Okay. And prior to that, had you been doing any
13 work with the police department?

14 A. Oh, yeah.

15 Q. And tell the jurors when you started doing that.

16 A. I started that in high school. My freshman year in
17 high school, as a 14-year-old, I applied for and was
18 accepted into their cadet -- police cadet or explorer
19 program. At the age of -- and that's a volunteer position.
20 We basically traded time so we could go on ride-a-longs
21 with officers and get the excitement.

22 At the age of 19, I was the youngest officer they
23 ever hired as a reserve officer, which, again, is a
24 part-time, non-paid, but full police officer status
25 position. Mainly, we, again, rode with regular officers.
26 Or we took out other vehicles, but we were mainly relegated
27 to patrolling parks. We didn't actually respond to -- we
28 weren't -- we couldn't be primary responders to calls. We

1 could be backup.

2 Q. And then in -- when did you become a full-time
3 police officer?

4 A. Um, I was sworn in in February of 1990.

5 Q. Okay. So -- and then when did you -- did you
6 eventually leave the police department?

7 A. I did.

8 Q. And when was that?

9 A. That was in November of 2002.

10 Q. Okay. So from the time you were 14 -- what year was
11 that?

12 A. 1980.

13 Q. Okay. So --

14 A. '79.

15 Q. -- 1980 to 2002, you were involved with the police
16 department?

17 A. Correct. Same one.

18 Q. Okay. And where was that?

19 A. The city of San Leandro, border city of Oakland.

20 Q. Okay. And then besides being -- working with the
21 police department, any other activities that you did
22 outside of the police department?

23 A. Yes.

24 Q. And can you the jurors what other type of activities
25 that you did.

26 A. Many of the guys I worked with for a long time said
27 this was my primary activity and police work was kind of my
28 secondary. But I had a love of coaching. I've coached now

1 -- and I spent all day yesterday couching -- for the better
2 part of 30 years.

3 Q. And who do you couch?

4 A. Currently?

5 Q. Well, just tell us -- can you just tell us over your
6 career who you've been coaching.

7 A. Certainly, the predominant sport I've coached is
8 women's volleyball. And I've -- and that's ranged from
9 fourth graders through collegiate, through actually
10 national, our USA team.

11 But with children, now I've gotten more involved
12 with baseball, which I love; softball, coaching my
13 daughter; soccer, both my son and my daughter; and
14 football, with my son.

15 Q. And have you done that continually for the past 30
16 years?

17 A. I have.

18 Q. And do you have your own family?

19 A. I do.

20 Q. And can you tell us who those people are.

21 A. Um, yeah. I'm married to my wife Kathleen. We've
22 been married this -- about 22-and-a-half-years. This next
23 July would be 23. My son Justin is 15. He's a freshman
24 this year at a high school in Loomis. And my daughter is a
25 seventh grader. She's 12.

26 Q. And tell us about how and why you left the Bay Area
27 and when that happened.

28 A. My wife and I both grew up in the Bay Area and

1 that's really all we knew. And I had left the police
2 department and I was doing -- I started my own business in
3 construction. And we kind of just felt a need to get out
4 and see something else. We loved the Tahoe area, and so we
5 decided that we'd like to look at possibly living -- we
6 didn't like the winters of Tahoe, so we decided we'd like
7 to live more in the foothill area.

8 So Placerville was kind of our first choice. But we
9 spent a weekend there, and we spent a weekend in Auburn.
10 We kind of liked the Auburn area a little more. And so we
11 ended up buying some land just north of Auburn, a little
12 bit further past -- about ten or fifteen minutes past
13 Auburn on I-80, just off of I-80.

14 Q. And where is that? What is that? Is that a little
15 town or --

16 A. Yeah. It's actually known as Weimar. So just prior
17 to Colfax and -- Weimar.

18 Q. Okay. Now, after the construction, how did that
19 work out for you, doing the contracting?

20 A. It was good in the Bay Area. And then we decided to
21 come up and I'd build my house up here. And then that was
22 about the time that -- that was 2006-2007. And the market
23 was -- was pretty much deteriorating and -- as I was trying
24 to finish the house. And now I was in a new area with no
25 reputation and no -- no contacts, so I decided construction
26 was not going to happen any more.

27 Q. Okay. And so what did you do for work then?

28 A. Shortly after I finished the house, I think within a

1 month or two, I -- again, it kind of -- it was somebody I
2 was coaching, their mother said something about their
3 father is a financial planner and he's always looking for
4 someone that he can mentor or train. And so I contacted
5 him. And he primarily worked with most of -- although he
6 was independent, most of his products that he represented
7 were with New York Life. And so I went through their
8 training and technically was an employee of New York Life.

9 Q. Okay. And so were you selling life insurance then
10 with this new job?

11 A. Yeah, that was one of the aspects of the business.

12 Q. And how did that pan out for you? How were you as a
13 life insurance salesman?

14 A. I'm not there any more.

15 (Laughter.)

16 THE WITNESS: I wasn't -- wasn't a great life
17 insurance salesperson.

18 Q. (By MS. CLEMENT) Okay. So is that what you were
19 doing when your mom was living at Emerald Hills?

20 A. Yes.

21 Q. So I want to talk a little bit about now about your
22 mom.

23 Can you tell us -- tell the jury a little bit about
24 your mom and who she was and what her history was before
25 she got dementia.

26 A. My mom primarily, first and foremost, was a teacher.
27 A formal teacher. Again, mostly with third and fourth
28 grades. That's the way -- she taught it for a couple years

1 back east, before she came west to California in the
2 fifties with a girlfriend. She met my father. They got
3 married, had my sister. She continued to teach for a
4 little while until my brother came along. And then she
5 left teaching to raise my brother and sister. And then I
6 came along.

7 And then finally when my sister had left to go to
8 college, and I was in mid-elementary school, about fourth
9 grade, my mom started back to work part time, and then
10 eventually went full time and went back to a school. This
11 was -- now I was out of high school. It was actually the
12 same school that I was coaching volleyball at, varsity
13 volleyball. And then she went back to substitute teaching
14 in the seventies. She volunteered to teach reading to
15 students that were struggling in reading.

16 So -- I'm sorry. My train of thought.

17 Is that the question?

18 Q. Yeah, that's the question.

19 A. Okay.

20 Q. Any other jobs your mom ever had?

21 A. The first job that I spoke of that she had, that was
22 part time when I was in elementary school, was with a high
23 school Christian ministry organization called, *Young Life*.
24 She was the area secretary. My parents were on the board
25 for that organization, and then she started that. But she
26 did that from 9:00 a.m. to 3:00 p.m. so she could drop me
27 off at school and pick me up. And she adjusted. She made
28 sure that -- that was important.

1 When I got to late high school, I think sophomore or
2 junior year, my mom started working as an admin assistant
3 or a secretary for a financial planning firm in Hayward
4 called, *California Capital Planning*. She held that
5 position, I think, for about ten years. And the climate
6 changed there and she was laid off. I remember one of the
7 few times that I really saw my mom break down and cry.
8 That was a difficult time for her. But then she got the
9 job at Castro Valley High School, which is where I spoke
10 that I coached volleyball. And she worked there for five
11 or six years.

12 I remember being nervous about that because I wasn't
13 sure that the girls I was coaching -- because she had some
14 teacher's assistants that eventually were some of the girls
15 I was coaching. But they all came to me and just said they
16 absolutely loved her, she was the best. So, *Oh, good*.

17 Q. Tell me a little bit about when you lived in the Bay
18 Area. How close did you live to your parents?

19 A. When Kathleen and I were first married -- well, I
20 went straight from my house to Kathleen and I being
21 married. So we moved. And I lived in San Leandro, and
22 they lived in San Lorenzo which is ten minutes, at the
23 most. No freeway. You just drove over. And we lived
24 there for five years. And then we bought our -- we saved
25 up enough money to buy a home in Castro Valley, which is
26 about 15 minutes, a little eight minute drive on a freeway
27 and then surface streets. And so about 15 minutes.

28 Q. And how frequently did you visit and be with your

1 mom and dad after you got married?

2 A. Um, I'd say I was there once a week. They were
3 right on the border of San Leandro where I patrolled often.
4 So I would drive over sometimes and have -- you know, my
5 sergeant would always let me go over and take a lunch break
6 or a dinner break. As long as I wasn't working the
7 midnight shift, they didn't mind if I came. But my mom
8 would always -- you know, I'd call her and say, "Hey, can I
9 come over for dinner tonight?" It was a lot better than
10 Jack in the Box, so...

11 Q. And can you tell us a little bit about -- moving
12 forward in time. Can you tell us a little bit about when
13 you first noticed anything about your mom that you thought
14 was out of the ordinary, or any concerns you had about your
15 mom, that maybe she was being more forgetful or problems in
16 that regard.

17 A. Um, the first incident -- and I have trouble
18 chronologically, but I'm pretty sure this one happened
19 first. My mom gave me a call and she said that her e-mail
20 program wasn't working, her computer wasn't working. And
21 specifically, I think it was her e-mail wasn't working
22 properly on her computer. And I said, "Okay. I'll be over
23 there this afternoon." And I don't remember if it was a
24 day off or not, but I went over there. And I flipped on --
25 there was a power strip underneath her -- she had like this
26 little desk. It was in a converted closet in our family
27 room. It used to be a sewing closet and now she had made
28 it kind of her computer room. And there was a power strip

1 on the floor underneath. I had drilled a hole in this desk
2 so all the power stuff could run down. And I just turned
3 that on and then her computer -- you know, we turned on the
4 computer and her e-mail program worked fine. And she was
5 like, "Oh, thank you."

6 And at that time I really didn't think about it. It
7 recurred, though, a couple months later, almost identical.
8 And that's when I went, "I think she's just forgetting to
9 turn the power strip on." And she was trying to turn the
10 computer on and forgetting that the power strip wasn't on.
11 And so I think that was in early, mid-2006.

12 Q. Okay. And did you have any other indicators that
13 maybe your mom's memory or her -- her -- she was just
14 having a problem with her mind?

15 A. There were two other incidents. One I shared
16 with -- with the defense that was significant to me. At
17 Christmas time my mom had a tradition. I have a particular
18 cookie that I like every Christmas. It's called a
19 Chocolate Crinkle. And my mom made those for me every
20 year. It was just kind of her Christmas present for me.
21 And she had made them at Christmas time early in December
22 of 2006 and brought them over, as usual, in a little tin.
23 And they were awful. She had forgotten something. And I
24 don't even know what the ingredient was. Flour. It was
25 just -- I don't even know what it was. But they were
26 terrible. And I knew something then was certainly wrong.

27 There was another incident where my wife was having
28 a procedure done at Stanford and I was over there. And my

1 father called pretty frantic. My mom was supposed to
2 follow him in the car. They were supposed to get one of
3 their cars worked on. And she never showed up at the auto
4 repair place. And he returned home. And then -- it was
5 hours. And we were just about ready to call the sheriff's
6 department and -- you know, but she did finally come home.
7 But it took about two hours. And she couldn't explain what
8 had happened, where she had gone. So, again, that was
9 probably latter 2006.

10 And so these things now, we started to put together
11 that something's -- something's not right.

12 Q. Did you have a talk with your mom about no more
13 driving after that?

14 A. We recommended it. When she was diagnosed formally
15 by the physician in November of 2006, he took her license.

16 Q. Tell us about your parents' relationship. How long
17 had they been married prior to them going to -- moving from
18 their home to The Palms?

19 A. I vividly recall their 50th wedding anniversary.
20 That was done at our home. And that would have been in
21 2004. So prior to them moving to The Palms, they would
22 have been married -- November of -- that would have been --
23 so they would have been a little over 52 years.

24 Q. And can you describe for the jury what the dynamic
25 was at home, like who did what around the house between
26 your mom and your dad.

27 A. My mom was the -- what's the word? She made things
28 run. My mom was incredible in so many ways. But she

1 worked, like I said, most -- you know, a good majority of
2 my life. But she -- she ran all the finances. She did all
3 the investing for my parents for retirement. She -- she
4 did all the cooking. She did all the cleaning. Housework,
5 she enjoyed that. She enjoyed gardening. She grew so many
6 things. She grew up on a farm in the midwest. So corn, it
7 was funny to see all these stalks of corn in our backyard
8 in the Bay Area. And they didn't come out great, but they
9 were pretty good. But tomatoes, raspberries. My children
10 loved going there for that reason -- or amongst many
11 reasons, but that was certainly one.

12 So my mom -- and my brother and sister and I
13 probably don't love this fact, but she was the main
14 disciplinarian, too. You know -- my dad traveled, you
15 know, every once in a while, and so she kind of took that
16 responsibility, too. My dad was more fun-loving and
17 jovial. And so my mom kind of set the rules, set the tone
18 of the house and did everything.

19 Q. When your mom started to have problems with her
20 memory and just being disoriented, not being able to find
21 her way home and things like that, what was happening in
22 the home? Did you notice changes there before they moved
23 to The Palms?

24 A. Yeah. My dad tried to step up a little more, but
25 he -- like I said, he really struggled with just keeping a
26 checkbook and knowing how to do the register. And that was
27 stuff my mom had always done. And so, yeah, we started
28 noticing.

1 We moved out of the Bay Area in -- well, the whole
2 family did in August of 2006. But my wife was still
3 commuting to Palo Alto a few days a week for her job. So
4 every time -- she would generally leave on a Tuesday
5 morning and come back on a Thursday night. She would spend
6 two nights down there. And every time my wife would go
7 down my dad would call and say, "Hey, can you come by? We
8 need some help." You know, mom forgot this or, you know,
9 can you help us with this? Especially doctor appointments.
10 So my wife was doing that every single trip.

11 Q. And did there come a point in time where the family
12 had a discussion with your parents about changing their
13 living situation?

14 A. We did.

15 Q. And prior to that discussion, were there things that
16 happened in the home to keep them in their own home?

17 A. There were.

18 Q. And can you describe that for the jurors.

19 A. The first thing Kathleen and I pursued or looked at
20 was bringing in a company that provides care for people so
21 that they can stay in their home. And we hired a company.
22 And I just remember one of them was called *Visiting Angels*.
23 I think that's the name of the company. We hired several
24 of them because my dad kept firing them. Because he -- I
25 think he thought he could do it. And so we hired one. And
26 the next thing I know, I was asking him, "Did they come
27 today?" And he said, "No." And I said, "What?" And he
28 goes, "Oh, I told them we didn't need them any more."

1 So we went through several of those services or
2 companies over a few months. And I -- it made my wife and
3 I feel much better. Because my dad was still working part
4 time at that time. So he was gone almost every day, Monday
5 through Friday, for about five hours. And that's when we
6 tried to schedule them to come in, about 10:00 a.m., stay
7 with my mom until two -- about four hours a day, until
8 about 2:00, and my dad would return home about 3:00.

9 Number one, they could provided companionship for
10 her. They made sure that she was -- my mom always liked to
11 have her hair done, and so they helped her with that. We
12 were concerned that she was starting to get confused about
13 showers, hot and cold. We didn't want her getting hurt.
14 So they provided bathing for -- just kind of assist. She
15 could get in and out of the shower, no problem. But just
16 make sure that she wasn't getting in and then turning on
17 the hot water for herself.

18 They cooked for her. We did notice that she had
19 been losing some weight. My dad just didn't -- he would
20 buy salad. My dad was a -- liked to eat health food, like
21 salads. And so he bought it, but she wasn't able to
22 prepare it so well. And he just thought if he bought it
23 that she could eat it. And we saw that she was losing. So
24 that was the other reason we wanted to bring some
25 additional help in.

26 Q. Anything else that you guys tried besides getting
27 the caregivers in the home? Was there anything else talked
28 about with your mom and dad about alternatives prior to

1 them moving to The Palms?

2 A. Yeah. I -- Kathleen and I asked them to move up
3 with us. Actually, when I built the house, when I built
4 our home, we built it -- on the ground floor, which was
5 kind of what we call a walk-out basement, I built it with
6 an in-law setup. It would have it's own, obviously,
7 bedroom, bathroom, and kind of like a living area. Kind of
8 foreseeing that -- and when we designed the house, my mom
9 had -- that was years before my mom had started to go down.
10 But I just thought, *I'm the primary caregiver*. My brother
11 and sister live out of the area. I'm the primary caregiver
12 for my parents, as well as my wife is the primary caregiver
13 of her three siblings for her parents. So we figured that
14 there was probably a good chance we would bring one of them
15 in, so we built the house like that.

16 Q. So you talked to your parents.

17 Did you talk to them about coming to live with you
18 and Kathleen and your kids?

19 A. I did.

20 Q. And what was the response?

21 A. My dad just really said no. He was nice about it.
22 And he did offer -- you know, part of it was -- where we
23 live, we're on 12 acres. We don't see a neighbor. That
24 was way too remote for my dad. My daughter's inherited his
25 city love. But my dad loved being around people, being
26 close to restaurants and shopping and stores. So he loved
27 coming to our house, but he didn't want to live there. And
28 he didn't think that would be the best for my mom; that

1 they -- you know, while my wife and I are working and my
2 children are at school, that they're kind of isolated in
3 this home up in the woods, so to speak.

4 Q. So was there a time then that your parents -- you
5 told us about a formal diagnosis of dementia.

6 Was there a discussion held with your parents and
7 you, your family, and their physician regarding
8 alternatives for your mom's care?

9 A. Yes.

10 Q. And what was discussed in that regard?

11 A. Um, the doctor had recommended that we look into
12 assisted living, some type of living facility that my
13 father and mother could live in together, but my mom could
14 receive the growing care needs that she had.

15 Q. And did you do any research into that?

16 A. We did. My wife was more -- what's the word?
17 -- educated on that already. But I didn't know anything
18 about assisted living. My dad had a small stint in a
19 nursing home when he was recovering from a knee replacement
20 surgery for a couple days, and it was not a good memory.
21 So that bothered me. My wife said, "Things have changed,
22 so there are some good places out there."

23 I remember on one trip we were actually -- and I
24 don't even think Kathleen was with me. I just had the
25 children. And I was coming home from the Bay Area, from
26 visiting my parents, and I stopped at several facilities
27 just to -- two that I remember, a place called Eskaton and
28 The Palms in Roseville. And The Palms, I had figured --

1 both of them, I had figured out from on-line searches and
2 the criteria that we were looking for, so...

3 Q. And how was it that your parents actually ended up
4 going to The Palms?

5 A. So then we -- with that -- I don't remember the
6 time. Several weeks, I think, later, we kind of did a
7 field trip. I went down. I picked up my parents. We
8 drove back up. We had talked to them. My brother had
9 asked them also to move in with him. He lives in Ohio.
10 They just -- they kind of ruled that one out because of
11 weather or whatever, cold. So -- and then my sister lives
12 in Santa Cruz in an apartment, so that wasn't a viable
13 option. So my dad was really open to the idea of getting
14 closer to -- I would like to think me, but it was probably
15 more his grandchildren. And so -- and my mom -- you know,
16 they were both really for that.

17 So we took them on a little tour. I brought them up
18 and we went to The Palms. We went to Eskaton. And we went
19 to one other facility, and I don't remember the name.

20 THE COURT: Miss Clement, we're going to need to
21 stop at this point.

22 MS. CLEMENT: Okay. Sorry.

23 THE COURT: Ladies and gentlemen, please leave your
24 notebooks on the chairs. Remember the admonitions. I will
25 see you at 1:30.

26 And, Mr. Boice, we'll see you back on the stand at
27 1:30.

28 And if counsel could stay for one moment, please.

1 MS. CLEMENT: Sure.

2 (The following proceedings were then had in open
3 court, outside the presence of the jury.)

4 THE WITNESS: Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: Can I stay, or do I need to leave?

7 THE COURT: You can stay.

8 (Pause.)

9 THE COURT: All right. I just wanted to address the
10 issue of Exhibit 450, which I said we would take up at a
11 later point in time.

12 I don't have it in front of me right now, but is it
13 a page out of the Title 22? Is that what it is?

14 MS. CLEMENT: No. It's a page out of a manual.
15 It's not part of -- it references Title 22, but it's not --
16 it's like a administrator's manual or -- for the licensing
17 program analyst.

18 THE COURT: Okay. And your objection, the grounds
19 for your objection were?

20 MS. CLEMENT: That it lacked foundation. And we
21 don't know if that was in effect at the time that
22 Mrs. Boice was there. It's incomplete. It's only one page
23 of the manual.

24 THE COURT: All right. Mr. Reid?

25 MR. REID: Your Honor, the document is from a -- the
26 evaluator manual that Dr. Locatell indicated she was
27 familiar with. She described what it's for. It's a
28 handbook that's put out by the Department of Social

1 Services to help the regulators understand the regulations
2 and do their job. This document in particular was attached
3 as an exhibit to Mr. Grant's deposition. And I believe
4 that Dr. Locatell testified that she has familiarity with
5 the evaluator manuals, she knows what their purposes are.
6 I think I laid a -- an adequate foundation for it.

7 THE COURT: All right. Submitted?

8 MS. CLEMENT: Yes. Submitted.

9 MR. REID: Yes, your Honor.

10 THE COURT: Because this is a document that was
11 referenced by an expert, you would start normally with
12 Evidence Code Section 721. And the document itself would
13 not be admitted into evidence, to the extent she relied on
14 it, used it, analyzed it, and so forth. So then beyond
15 that, the question is foundation and authenticity. And
16 there is no one else here who has done that at this point.

17 So at this present time, I'm going to sustain the
18 objection, both under Evidence Code Section 721,
19 foundation. And we'll see where we go from here.

20 MR. REID: Thank you, your Honor.

21 MS. CLEMENT: Thank you, Judge.

22 THE COURT: We're in recess.

23 (Lunch recess.)

24 (Change of court reporters.)

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1 MONDAY, FEBRUARY 4, 2013

2 AFTERNOON SESSION

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4 The matter of JOAN BOICE, by and through her
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,
8 Defendant, Case Number 34-2009-00063714, came on regularly
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the
10 Superior Court of California, for the County of Sacramento,
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
14 BOICE and MARK BOICE, were represented by LESLEY A. CLEMENT,
15 Attorney at Law; VALERIE DAWSON, Attorney at Law (not
16 present); ASHLEY BAIRD, Attorney at Law; and SEAN LAIRD,
17 Attorney at Law.

18 The Plaintiffs, ERIC BOICE, NANCEE BOICE and MARK
19 BOICE were present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS AT
21 EMERALD HILLS, was represented by BRYAN R. REID, Attorney at
22 Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,
23 Attorney at Law.

24 Also present on behalf of the Defendant, EMERITUS
25 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.
26 McKINNON, Vice President of Legal Affairs; and LISA HULSE,
27 Vice President Quality & Risk Management.

28 ///

1 **(The following proceedings were then had in open court, in**
2 **the presence of the jury.)**

3 COURT ATTENDANT: One just went to the restroom.

4 THE COURT: You can all be seated.

5 COURT ATTENDANT: All right. Come to order.

6 Department 45 is in session.

7 MS. CLEMENT: Thank you, Judge.

8 CONTINUED TESTIMONY OF

9 ERIC BOICE, Witness called on behalf of the Plaintiffs,

10 RESUMED DIRECT EXAMINATION

11 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
12 the Plaintiffs:

13 Q Okay. So when we broke for lunch you were telling us
14 about the field trip you made with your folks to the Palms,
15 Eskaton, and another facility. Was that up in this area?

16 A Correct.

17 Q Okay. And, um, after that field trip did you, as a
18 family, come to a decision about where your parents might
19 want to live?

20 A Yes. They indicated, um, a preference for the Palms.
21 They just liked the -- the feeling there. Um, I don't
22 remember much else besides that. But, yeah, both of my
23 parents liked it.

24 Q And did you like it?

25 A I did.

26 Q Okay. And now after that field trip did you have to,
27 um, do some things for your parents in order to help them
28 get into the Palms and actually be admitted to that

1 facility?

2 A Yes, we did.

3 Q Okay. And was one of the things that you had to do
4 was get some documents, medical records regarding your mom?

5 A Correct.

6 Q And was that the first time that you can remember
7 having to get medical records for your mom?

8 A Yes.

9 Q Now, how did you go about getting those records for
10 your mom?

11 A Um, went down to Kaiser in Hayward and, um, asked for
12 the records.

13 Q Okay. And when you asked for the records, were you
14 told anything?

15 A I was.

16 Q And what were you told?

17 A I was asked if I had authority to -- to obtain her
18 records.

19 Q Okay. And what did you tell them?

20 A I simply said, um, I'm her son.

21 Q Okay. And did you get any advice at that point on
22 what you should be doing?

23 A Yes.

24 Q And what --

25 A The --

26 Q Go ahead.

27 A I'm sorry. The clerk simply said, After you sign your
28 name, would you just put the letters POA. And I -- oh, I'm

1 sorry.

2 Q And what did you understand that to mean?

3 A I didn't know what it meant. I asked her what it
4 meant though.

5 Q And what did you learn?

6 A She told me that just stands for power of attorney.

7 Q And did she tell you why you should put that behind
8 your name?

9 A I think she said something like it just gives her
10 the -- she can go get my -- my mom's records then for me.

11 Q And did you develop a practice of doing that after
12 that time?

13 A No.

14 Q Now, after you got those records for your mom did you
15 have further communication with the Palms?

16 A Yes.

17 Q And what happened next as it related to getting your
18 folks into the Palms?

19 A We had to bring mom and dad up for an evaluation.
20 They both had to be evaluated by the Palms staff prior to
21 any kind of admission.

22 Q And was that before any contract was signed?

23 A Yes.

24 Q And then, um, after that evaluation what was the next
25 step --

26 A Um --

27 Q -- towards moving your parents into the Palms?

28 A Yeah, we brought them up. I know my brother flew out

1 and, um, my sister was there. She had driven up. And --
2 and we met -- we spent the night in San Lorenzo at their
3 home, and the next morning was -- was move day.

4 Q Okay. And can you tell us, um, did your folks get --
5 did they bring some of their furniture from their home?

6 A They did.

7 Q Okay. And, um, after your parents moved -- when they
8 first moved in there how -- what was the living arrangement
9 for your mom and dad?

10 A They shared an apartment on the second floor of the
11 Palms.

12 Q After a while did that change?

13 A It did.

14 Q Okay. And what -- what was the change?

15 A Um, a few weeks into their stay the memory care
16 director contacted me and said that they thought my mom
17 would benefit from the activities that the Memory Care Unit
18 provides during the day. And so they began to bring her
19 over there during the day for the activities. Um, and then
20 after a few weeks of that then they said that they thought
21 she would benefit even more if she lived there.

22 Q And did your mom move to -- into the Memory Care Unit?

23 A She did.

24 Q And did you observe any changes in your mom after she
25 moved into the Memory Care Unit?

26 A Yes.

27 Q Can you tell the jurors what those changes were that
28 you -- that you saw?

1 A The first one that was very noticeable to me, um -- my
2 mom and dad had been kind of in this enabling relationship
3 in that as my mom began to decline in her ability to eat or
4 feed herself, um, my dad just took over. He spoon fed her
5 and did everything and so my mom kind of let that happen.

6 When she moved to the Memory Care Unit they began to
7 work with her on that. And I remember being in -- eating a
8 lunch with her just a week or two after she had been in
9 there, and she was taking the pieces of fruit and -- and
10 small finger foods and -- and feeding herself. And I was --
11 I hadn't seen that in quite a while so I was, um, really
12 happy about that.

13 Q Okay. Any other changes that you noticed about your
14 mom after she moved into the Memory Care Unit at the Palms?

15 A Positive or negative?

16 Q Any changes you saw.

17 A Um, she just seemed -- she -- she was -- well, yeah,
18 her stay at the Palms she was putting on a little bit more
19 weight. Not in a bad -- just she needed to put a little
20 more on. And she just seemed happier. She was doing things
21 every day. She -- you know, when I came in she was always,
22 um, involved in something and -- and that was exciting.

23 Q And what kinds of things did you see your mom involved
24 in at the Palms?

25 A They had an activity room there that always had
26 some -- and they were either reading a story, um, playing
27 some form of a game. Um, they had this -- these bowling
28 pins that they would set up and the residents, if they were

1 in wheelchairs, they could roll them from their wheelchairs.
2 Most of them were a little bit more mobile and they could
3 actually do that.

4 Um, she did arts and crafts. One of the things that
5 was funny was my mom had -- with finger paints had made a,
6 um -- they helped her do a hand print of herself and, um,
7 she gave it to -- and there was some words on it. It was --
8 it was hard, um -- (crying). It said something about these
9 hands, you know, that held you and -- and helped you, even
10 though I'm old I still love you, something to that effect.
11 And I thought it was ironic because my daughter had just --
12 my daughter was 7 at the time and had just made this clay
13 almost identical where she had put her hands in clay and
14 given Kathleen and I the -- the -- near the same present.
15 So, sorry.

16 Q That is okay. Was your mom walking when she was at
17 the Palms?

18 A Yes.

19 Q Did she use a walker toward the end of her time there
20 or middle of her time or at some point in time?

21 A She had the walker before we went to the Palms. She
22 didn't use it, um, as -- as much as probably we would have
23 felt comfortable with her using it. Um, I always felt more
24 comfortable when she had the stability of the walker, yeah,
25 but she did use it at the Palms.

26 Q Now, we know that at some point in time there was a
27 decision that was made for your folks to move from the
28 Palms. And can you explain to the jurors how that process

1 started?

2 A Yeah. Um, I know you've all heard the salad bar
3 story. But my dad -- my dad had several good friends at the
4 Palms that had passed away and he -- he -- he wanted
5 something else. He wanted a change of scenery. He wanted
6 to be somewhere else. And at first I kind of ignored that,
7 I didn't listen to him.

8 And then several weeks later he brought me a brochure
9 of a place that he had gone and visited, so I knew that he
10 was pretty serious of going down this avenue. So I started
11 to help. And it was at a soccer game -- a parent -- I had
12 just mentioned, you know, we were talking with other parents
13 about, you know, helping take care of their parents and I
14 said, you know, my -- my parents want to move but I just,
15 you know -- we have to find a facility where both of my
16 parents can stay. My mom needs to be in memory care and my
17 father is pretty independent. And they said there is a
18 place like that in Auburn.

19 And I had -- I had done some research certainly before
20 they went to the Palms and I never found this place. But
21 they said, yeah, I don't remember the name. So I went home,
22 Internet searched it, and found Emerald Hills listed there.
23 And it looked like it was the perfect match in terms of, um,
24 exactly what we had at the Palms. It had the memory care,
25 it had the assisted living. I would have liked independent
26 living, but they didn't -- that is what my dad really
27 needed, but, um, the assisted living was fine. And it was
28 all under one roof and it was much, much closer to our home,

1 um, for -- for my parents who liked to come up and spend
2 time with the kids' activities and stuff.

3 Q So we also heard from Melissa Gratiot. Now, do you
4 remember her when she testified?

5 A Yes.

6 Q And did you also have a connection with her?

7 A I did.

8 Q Can you tell the jurors about that?

9 A Um, at about the same time that we were kind of in
10 search-mode for -- for something new, I had been given a
11 contact by New York Life to contact a couple, um -- her
12 husband's name is Mark -- Mark and Melissa Gratiot, um,
13 where they use to live in Forest Hill. And I drove out
14 there. I just met Mark the first day, she wasn't there.
15 Um, and we did some work. I don't even remember exactly
16 what we did work-wise, but then I went back there -- they --
17 they had gotten some forms of insurance and so when I went
18 back there to deliver the policies that is when I met
19 Melissa.

20 And in small talk I said something about -- again, I
21 don't remember how it came up but it came up that I was
22 looking for a place. And she had not been officially hired
23 yet but she said, I think I'm going to be the sales and
24 marketing person for Emerald Hills. And I go, oh, my gosh,
25 I just got some information about them and that's kind of
26 where we are looking. So that was it.

27 Q When was the first time you remember having any
28 contact, official contact with Emerald Hills?

1 A I want to say that was in late July she gave me a
2 call, I think, and said, you know, where are you guys at in
3 that -- you know that we spoke about? Because I think it
4 was earlier in July when I had spoken to her at her home.
5 And I said, you know, I think we are pretty close.

6 Q Okay. Did you at some point in time do a tour of the
7 facility?

8 A We did.

9 Q And who did you tour the facility with?

10 A Um, on my part, on our family?

11 Q Yeah.

12 A Um, my father and my brother who had flown out and,
13 um, myself.

14 Q And tell the jurors what was your impression of the
15 facility when you went there?

16 A I was impressed. It's a clean building. Fairly
17 modern. The same almost identical architecture build style
18 as the Palms which was nice because, you know, I figured my
19 mom would benefit from that, not having a drastically
20 different, um, set of scenery. So, um, staff was --
21 seemed -- appeared caring, kind. Melissa certainly was.

22 Q Okay. And was that who gave you the tour, Melissa?

23 A She did.

24 Q And can you tell us what you remember at all about
25 your tour with Melissa and your dad and Mark?

26 A Yeah. It was kind of a very cursory quick tour of the
27 central lobby area. Um, we went into the dining room, the
28 main dining room for the assisted living side. And then we

1 went into the memory care, um, rather quickly. But, um, she
2 did show us a room in there, one of the resident's rooms.
3 Um, I don't -- we kind of just popped in and popped out. We
4 didn't stay, you know, um, she took us out.

5 And then we went to, I believe it was on the third
6 floor, but I don't know that for sure. Um, they had like a
7 model room that if you go into model homes, kind of the same
8 thing, all of the curtains were perfectly trimmed for that
9 room and the decor, the bed had the throw pillows on it. It
10 was really pretty and I went, wow. My dad was very
11 impressed. They had a little mini refrigerator in there
12 that, um, you know, they had it stocked with sodas and so my
13 dad liked that treatment. So they gave, you know -- she
14 gave him a Coke or Dr. Pepper or something.

15 Q What did, um, Melissa tell you at all, if you
16 remember, about what services that, um, Emeritus could
17 provide for your mom?

18 A Um, well, she gave us a brochure -- you know, there
19 was a whole packet, um, of brochures that she gave us, and
20 she kind of went over some of the highlights that they
21 provide. It seems like I heard a lot of times that, you
22 know, This will be just like the Palms, you know, all of the
23 good -- because I came in saying, hey, we are totally
24 pleased with the Palms. And it was just like the Palms, you
25 know, we are the same type facility, everything.

26 Q Anything else you remember being told about, um,
27 services that Emeritus could provide for your mom with
28 Melissa?

1 A Not offhand.

2 Q Okay. And then, um, did you guys thereafter make a
3 decision about where your mom was going to live, your mom
4 and dad?

5 A Yeah. We -- I do remember discussing, you know, my
6 parents' finances. They were on a very set, um, financial
7 situation and, you know, trying to talk to them about, you
8 know, if -- if we move in, you know, because they say, hey,
9 you can move in relatively right now. I said, But we are
10 paying 30 days -- you know, we have to give a 30-day notice
11 here and then if we are paying from there it means we are
12 doubling for 30 days and I said we can't afford -- my
13 parents can't afford that.

14 So then I remember Melissa saying, well, she will work
15 with the executive director to see what they can do for us.

16 Q Okay. And then, um, who was the next person you met
17 with from Emerald Hills?

18 A Probably -- I mean, I met a bunch of people that day
19 but --

20 Q Okay.

21 A -- Nancy Cordova.

22 Q Okay. So as you went through the facility did you
23 meet people as you walked through?

24 A Yes.

25 Q Okay. And, um, can you tell us about your next time
26 that you met with someone from the facility after that visit
27 in August, was that, um, Nancy Cordova, the executive
28 director?

1 A Yes.

2 Q Okay. And tell us about that meeting, what was that
3 meeting about?

4 A That was, um, basically like an admissions meetings I
5 guess. There was a sense of urgency to sign documents, um,
6 get the -- because they had -- they told me that my mom
7 had -- there was one open spot in the Memory Care Unit and
8 if we didn't do it, you know, certainly it could be taken.
9 And, um, so, yeah, that was -- that was the meeting, here,
10 you need to sign -- sign these documents and get us a check
11 and --

12 Q Okay.

13 A -- we are good to go.

14 Q And did you -- in that meeting with Nancy Cordova did
15 she -- did you go over the contract at all?

16 A The contract, the admission agreement?

17 Q Yeah, the admission agreement. Sorry. Lawyer talk.
18 Sorry. The admission agreement?

19 A Yeah. That -- I signed, I guess, an admission. There
20 were two different terms that we used in the deposition,
21 one -- one was an admission agreement and the other one was
22 something else. So I'm not sure which one was the one we
23 called it that -- on that day.

24 Q Okay. And, um, did you remember anything that Nancy
25 told you about when you signed the admission agreements with
26 her -- and was that in late October -- I mean, excuse me,
27 late August of --

28 A It was late August.

1 Q Okay. And then did you, um, have your -- did someone
2 bring a check down for your parents?

3 A I believe I had forgotten checks that day and so she
4 insisted that a check get brought. I think I was going off
5 to work and so I called my wife, you know, Kathleen who was
6 at home and she brought a check down.

7 Q Okay. Now, um, let's go -- move forward to the date
8 that your mom moved in.

9 A Okay.

10 Q Okay. Your mom and your dad?

11 A Correct.

12 Q Did they move in the same day?

13 A They did.

14 Q Tell us about who -- did you get some help to move
15 their furniture and stuff over from the Palms?

16 A Yes.

17 Q And who helped you do that?

18 A Um, my wife's cousin, her husband, my wife and I. Um,
19 the -- the maintenance director there was very
20 accommodating. He said, Do you need furniture dollies or
21 anything like that? So he brought them out for us. So,
22 yeah.

23 Q Okay. So it was your wife, her cousins, um, you, mom
24 and dad?

25 A Correct.

26 Q And whose furniture did you move in first?

27 A Oh. Um, I think we got mom all situated first. Um,
28 she was supposed to have her meeting that morning, um, late,

1 I think 10:00 or 11:00 a.m., and so we wanted to make sure
2 that her -- mom was all set up. That one was the one that
3 we needed kind of a meticulous set-up with.

4 And if I could, that was one of the criteria when we
5 were selecting this facility was that it would enable a
6 recreation of my mom's bedroom basically. That was one
7 thing that was important to me. I had taken a lot of
8 photographs of my parents' bedroom back in the Bay Area and
9 we recreated that bedroom at the Palms. And then I wanted
10 to make sure physically it fit at Emerald Hills, that we
11 could do the same. So her pictures would be located in the
12 same location, her dresser in relation to her bed, the
13 spacial stuff there. So, um, all of that was important.

14 So, yeah, we moved -- I am 99 percent sure we moved
15 her furniture in first because my dad was a little more
16 flexible. And, if need be, he could come up and spend the
17 night at our house if we didn't get it all done that day.

18 Q And did you get your mom's room set up just the way
19 you wanted it, like she had it done?

20 A I did.

21 Q And then at some point did you need to leave?

22 A I did.

23 Q And why was that?

24 A Um, it was getting into the early afternoon. My
25 children at that time were in, um, second -- second and
26 fifth grade and so they needed, um -- I needed to go pick
27 them up from school.

28 Q And who -- who stayed with your mom and dad?

1 A Um, Kathleen did.

2 Q Okay. And was it -- what was your understanding as
3 to, um, why your wife was staying still -- why Kathleen was
4 still staying?

5 A Um, my wife had a special relationship with -- with my
6 mom, and my mom was very comforted by Kathleen. And so,
7 yeah, it was -- and I had been working all morning moving
8 the furniture and I was tired. And so my mom, she knows,
9 you know, how to take care of things. I'm sorry, did I say
10 my mom? Kathleen knows how to -- Kathleen knows how to take
11 care of things in ways that I'm not -- she is much better
12 than I am in many, many areas.

13 Q Okay. So I'm going to move forward a little bit
14 deeper into the stay there at Emerald Hills, okay?

15 A Okay. Excuse me.

16 Q That is okay. I'm up here dropping eye drops in my
17 eyes all day, so it's no biggy.

18 Now, I want to move into after your mom had been there
19 about a month. You've been here in trial most days, have
20 you not?

21 A Correct.

22 Q The days you've missed, can you tell us why you've
23 missed?

24 MR. REID: I'm going to object. That is not relevant,
25 352.

26 THE COURT: What's the relevance?

27 MS. CLEMENT: I'll let it go, your Honor.

28 THE COURT: All right. Thank you.

1 MS. CLEMENT: No problem.

2 Q (By MS. CLEMENT) Um, tell us about have you heard
3 testimony in the trial about this October 14th order that
4 Dr. Awan made about your mom having more frequent and
5 intense pain in her right foot, no longer able to bear
6 weight and asking for advice in getting an order to take
7 your mom to Kaiser to get an x-ray of her right foot and
8 ankle?

9 A Yes, I have.

10 Q Had you ever heard of that order any time while your
11 mom lived at Emerald Hills?

12 A No.

13 Q How frequently were you visiting your mom at Emerald
14 Hills?

15 A I was there two to three -- two to four times a week.
16 Um, Kathleen and I kind of did a divide and conquer where,
17 you know, almost five days a week we were there, one or the
18 other of us.

19 Q Okay. And can you tell me how often, if you weren't
20 there, would you talk with your dad?

21 A Almost every day.

22 Q And how would you talk with your dad?

23 A He had a cell phone, and I was number one on his speed
24 dial.

25 Q And what kind of things would your dad call and talk
26 to you about?

27 A Um, boy. Big variety there. He would call a lot of
28 times if he had heard things. Um, one of the caregivers had

1 given him an update on mom that he didn't like, um, you
2 know, that he was concerned about. He would call right
3 away. And, um, he reported things that he didn't like that
4 he saw, um, were happening almost daily with me.

5 Q Now, did your dad ever tell you about this order for
6 October 14th, 2008, for your mom to go get an x-ray of her
7 right foot and ankle?

8 A No.

9 Q Had you heard about that at all any time before the
10 lawsuit?

11 A No.

12 Q Okay. So can you tell us when was the first time you
13 ever heard from anyone from Emerald Hills that your mom was
14 having any difficulty bearing weight or having a problem in
15 that regard?

16 A I received a phone call on November 3rd to that
17 regard.

18 Q And who did you -- can you tell us, best you can
19 remember, who you heard that from and what was the
20 conversation -- communication?

21 A It was one of my mom's, um, resident care -- you would
22 think I know that title by now -- um, resident care people,
23 med tech or -- and I -- just by process of elimination, the
24 two that I remember very specifically were -- was a gal
25 named Lynda and a gal named Michelle. And I -- I don't
26 remember which one of those, but one of those.

27 Q And what did -- what did you learn in that
28 conversation?

1 A She told me that they are very concerned, my mom was
2 having trouble standing and bearing any weight on her right
3 foot. Um, and then kind of in passing she said, And she's
4 got some kind of a -- like a bunion on her foot that's kind
5 of bleeding, looks, you know, like it needs to be looked at.

6 Q Okay. And what did you do in response to that
7 communication?

8 A Um, I called -- that was a Monday, and I called
9 immediately to Kaiser and I said, you know, this is kind of
10 an emergency situation, I need to get my mom in to see her
11 doctor tomorrow and -- and they accommodated. They said,
12 Okay, and --

13 Q And who was that doctor?

14 A Dr. Awan.

15 Q And, um, when you went -- did you go to the facility
16 the next day to get your mom?

17 A I did.

18 Q And was it your normal routine, if there was -- your
19 mom needed to go to the doctor, would you usually go or your
20 wife Kathleen?

21 A Correct.

22 Q And would your dad usually accompany?

23 A Yes.

24 Q Okay. And so you went the next day to get your mom
25 and were you greeted by anyone there that day?

26 A Yeah. Almost immediately, um, when I walked into the
27 lobby area Nancy Cordova came out of her office and -- and
28 stopped me.

1 Q And do you remember what she said to you?

2 A She just talked to me about why I had been called down
3 there and, you know, the -- the -- so you're here to take
4 your mother to the doctor, and I said, Yeah. And then she
5 said something along the lines, you know, We think she may
6 have had a stroke. And I just -- I was flabbergasted. I --
7 I was kind of -- I go, What -- what do you mean? And she
8 said, Well, she's having trouble moving her -- her right
9 side. And I said, Okay, and so that was about it.

10 I quickly went into the Memory Care Unit and put her
11 in a wheelchair. I don't even know if I put her, she may
12 have already been in one, I don't remember, and got her to
13 the doctor.

14 Q Okay. When you got to the doctor did you see
15 Dr. Awan?

16 A We did.

17 Q Okay. And were you in the room with Dr. Awan when
18 Dr. Awan examined your mother?

19 A Yes. I -- there has been -- specific -- trying to
20 specifically recall that appointment. I -- I was there, I
21 know, for most -- there is only a few times when I use to
22 leave because, you know, it was more of an invasive, um,
23 procedure, so I would leave on those. But that one I was
24 there, I think, the whole time.

25 Q So would you leave if the doctor was taking off your
26 mom's pants or something like that?

27 A Oh, yeah.

28 Q Okay. Okay. So on this appointment on November 4th

1 when you went in did you tell Dr. Awan what you knew about
2 what had happened with your mom?

3 A Yes, I did.

4 Q And what did you tell Dr. Awan?

5 A I -- I told her what Nancy had told me. I said, you
6 know, The staff believes that maybe, you know -- I didn't
7 know what the signs or symptoms were. Um, I said, The staff
8 believes possibly that my mom had a stroke. You know, she
9 has this blister or bunion on her foot and she can't bear or
10 she is really having trouble bearing weight on her right
11 foot.

12 Q Okay. And, um, what did Dr. Awan communicate to you,
13 if anything, in -- in reply as a result of her examination?

14 A Well, initially she was just typing all of that
15 information I was giving her. And, um, she did question me
16 on the -- on the stroke stuff. She goes, well, you know,
17 um -- because I just told her -- I said, you know, We think
18 that she may have had a stroke. And she said, Where did you
19 get that information? And I said, Well, that's what, you
20 know, a staff member had told me at Emerald Hills. And she
21 kind of refuted me like, there is no indication that we are
22 seeing that, um, may or may not, but I'm not seeing anything
23 like that.

24 Um, she looked at the -- at the bunion and she
25 thought, you know, it was possibly healing. There had been
26 a little bit of a scab forming. Um, and I don't remember
27 what she said regarding the, um, bearing the weight, other
28 than that, you know, may have been the cause, the -- the

1 bunion.

2 Q All right. Did Dr. Awan talk to you about any testing
3 or anything with relation to ruling out a stroke?

4 A She did.

5 Q And what did she tell you about that?

6 A I -- I brought -- I said, Is there anything we can do
7 to determine if my mother has had a stroke? And she goes,
8 well, you can do -- and forgive me -- she said, like a CAT
9 scan or an MRI can be done. Um, and then she kind of put it
10 back on me and she said, For what purpose? If she has or
11 she hasn't, what are we going to do? And I -- I kind of
12 thought, well, you know -- I didn't know what to think
13 really.

14 Then she said, you know, we can -- we can subject your
15 mother to like an MRI, which is an enclosed, you know --
16 with her state -- with her level of dementia at this point,
17 um, that could be traumatic and -- and with the results,
18 what are we going to do. And as hard as that was for me to
19 hear, she was right, you know.

20 Q Did Dr. Awan make any recommendations to your
21 understanding at that point in time, any orders, or did she
22 tell you anything she was going to do in response to what
23 she saw about your mom that day?

24 A She was going to -- because of the -- the -- now I
25 know the word -- contractures that my mom had with her arm,
26 she wanted to bring in like some physical therapy for her.
27 So she was going to have -- like Kaiser had resources to
28 help with that, which I was pretty excited about. She said,

1 I will get some help for your mom. And, um, that's --
2 that's what I recall.

3 Q Okay. Um, now, did she notice anything at that time
4 about your mom's feet or ankles other than this open sore
5 that she asked you to do anything about?

6 A At some point I know we, um -- and I don't know the
7 medical term, edema comes to mind but I'm not sure, but kind
8 of a swelling of her lower extremities. And I know that
9 because I remember I had to go buy them, they are called TED
10 hose. And I know TED is an acronym, but I don't know what
11 it stands for.

12 But I remember walking into Rite Aide thinking I'm to
13 buy some socks that were probably going to be 5 bucks but
14 they were like 40 bucks. They were really expensive. But I
15 don't remember if that was that particular appointment or
16 not.

17 Q Okay. And at this point then did you bring your
18 mom -- strike that.

19 Did you bring your mom home, back to Emerald Hills?

20 A I did.

21 Q And at this point in time had you -- had you
22 personally met Peggy, the nurse yet?

23 A No.

24 Q Had you ever tried to look for her over the course of
25 the three months your mom lived at Emerald Hills?

26 A Many times.

27 Q Can you tell the jurors about what your efforts were
28 in that regard?

1 A I was use to an ongoing dialogue with the medical --

2 MR. REID: Your Honor, this is non-responsive.

3 THE COURT: Sustained.

4 MS. CLEMENT: Okay.

5 Q (By MS. CLEMENT) Can you tell the jurors what your
6 efforts were with regard to trying to see or talk to Peggy?

7 A Yeah. It became a -- almost a routine affair every
8 time I would go there to ask if the nurse was available.

9 Q And what had been your experience at the Palms with
10 regard to speaking with the nurse there?

11 A Um, there was always someone to talk to. There was a
12 gal who coordinated there, her name was Kay Keh (phonetic).
13 I don't remember her title, um, but I had to walk by her
14 office every time to get back to the Memory Care Unit there
15 and so I would check in with her.

16 The Memory Care Unit director, her name was Danielle.
17 I spoke to her -- she was there almost every time. Very in
18 touch with what was happening in her facility, her
19 community. And then also the executive director.

20 Q Okay. Now, after this, you became aware of this scab,
21 union problem and the bearing weight problem, um, on
22 November 4th, did you increase at all any effort to try to
23 meet with Peggy?

24 A Yes.

25 Q And can you tell the jurors what you did to try to
26 meet with her?

27 A Prior to that it was more casual. It was as I came
28 there I would say, you know, Is the nurse available today?

1 No. She is out of the building. She is in a meeting. Um,
2 so now I started saying, I need to talk to the nurse. Okay.
3 I got -- really was met with the same answers, but I said,
4 No, I need to talk to her. And started leaving messages
5 with her, um, or at the concierge desk with Melissa on
6 several occasions. And -- and Melissa was trying to tell
7 me, you know, Okay, I'll have her call you. I never
8 received a phone call.

9 Q How about with Nancy, did you try hooking up with
10 Nancy after that doctor's appointment of November 4th?

11 A She became about as hard to find as Peggy after that.
12 I would walk in -- and she had a office just to the left as
13 you walk in. It did have a glass, fairly full-sized glass
14 but there were Louvelier blinds on it. And for some reason
15 after that almost every time I would walk in those were
16 pulled. You couldn't see in. Um, I didn't know if she was
17 there or not. I would ask the concierge and they would say,
18 No, she is not here, she is out.

19 Q Now, did -- between the time -- strike that.

20 Did you eventually get to have a meeting with Peggy
21 and Nancy?

22 A Yes.

23 Q Okay. And do you remember when that meeting was?

24 A Yes.

25 Q And when was that?

26 A November 17th, 2008.

27 Q And just prior to that meeting was there a problem
28 that you encountered at the facility related to your mom's

1 medication?

2 A Yes.

3 Q And can you describe that to the jury?

4 A We had received a phone call -- I received the phone
5 call on, um, that Friday, um, I want to say the 14th, and
6 they informed me that my mother had no more morphine, that
7 she was going to be out, and she would go days now over the
8 weekend unless we did something about it. And this is about
9 four o'clock on a Friday afternoon. We had to physically
10 then go to a pharmacy in downtown Sacramento. Where I live,
11 impossible. There is no way. Luckily, I believe my wife
12 was at work. I called her. She dropped everything, left,
13 got there moments before they closed and was able to get the
14 prescription. I did inquire if the prescription would be --
15 did -- when did they have medication til and they said,
16 Friday was covered. So I had to get it in there Saturday.

17 So Saturday I went there, um, before my son's football
18 game, and, um, I ran in and I went back to the Memory Care
19 Unit and was looking for anybody and there was no one. And
20 I came back out to the concierge and I said, you know, I
21 can't find anybody. And she goes, Okay, I will try to get
22 someone. I waited there.

23 I walked back into the Memory Care Unit -- and most of
24 these rooms they propped open the doors. She tried to make
25 it kind of an excuse, like, Oh, they are probably in with
26 somebody, working with somebody. I said, No. My mom is in
27 her room. Her roommate is in there. I can look in to --
28 you know, there are three or four people in the activity

1 room. I can account for nearly everyone. I said, There is
2 no one here. And she tried to get a hold of someone.

3 I went over to the assisted living side where their
4 med tech room was, where the nurse's office was, and I
5 couldn't find anybody. I didn't go up to the second and
6 third floors, but there was no one in that facility, other
7 than the concierge.

8 After 20, I don't know, 20, 30 minutes um, late now
9 for my son's foot -- and, you know, I had him with me, um, I
10 finally left, you know, this narcotic with the concierge. I
11 felt, that's not right.

12 Q And did you have an understanding that the med tech
13 room that you went looking for was just that room just
14 outside the memory care?

15 A Yes.

16 Q Okay. So let's move forward now to the meeting, um,
17 November 7th --

18 A 17th.

19 Q 17th, thank you. Who -- who all was in that meeting?

20 A It was Peggy Stevenson, Nancy Cordova, Kathleen, my
21 wife, Melissa Gratiot and myself.

22 Q Okay. And who asked Melissa to be there?

23 A Kathleen and I did.

24 Q And why did you want Melissa there?

25 A I felt like she would be a neutral -- she worked
26 there, um, but she would -- she would be a neutral party,
27 and she would know if things were not being told to us that
28 were accurate. Um, we started to really have some growing

1 concerns about what was happening there.

2 Q So tell us about the meeting. What do you remember
3 about what -- what -- what happened at the meeting?

4 A Kathy -- Kathleen had prepared a very detailed, um,
5 several pages of bullet points of issues that we wanted
6 addressed, that we wanted answers to, that we wanted to
7 bring up, that we wanted -- they were concerns that we had,
8 incidents that had taken place. And we wanted really to
9 make them aware that these were -- this was happening. And
10 we wanted -- obviously this was the executive director and
11 the director of their nursing, um, their resident care
12 director I guess her title was, so now we felt like we
13 finally had the ear of the people that make things happen
14 there.

15 Q Um, during that meeting, um, did you feel -- how --
16 how did you -- well, let me ask you this: Who were -- who
17 was leading the discussion in the meeting?

18 A Kathleen.

19 Q And who was responding to Kathleen's points that she
20 was raising?

21 A Primarily Nancy.

22 Q Okay. And how did you feel in that meeting, you know,
23 after hearing from Nancy and hearing your wife's points that
24 she was raising?

25 A I went in there pretty angry, um, especially coming
26 off of that incident from the weekend from Saturday. Um,
27 but Kathleen and I were reassured numerous times that many
28 of the issues that we were bringing up, um, they would

1 either investigate, they would look into, or they were
2 certainly random one-time occurrences. That won't happen
3 again, we -- we promise you. Um, we -- we are very sorry
4 that this issue has come up or -- you know, so they were
5 very reassuring.

6 Q At that time had you ever come to see your mom on the
7 overnight shift? Did you ever come like in the middle of
8 the night to visit your mom?

9 A No.

10 Q Did they at all at that time tell you that they
11 couldn't provide care for your mom?

12 A No.

13 Q Um, did Nancy or Peggy tell you anything about what
14 the staffing was in the facility on the night shift?

15 A Not at all.

16 Q Um --

17 A I mean, you know what, one of the bullet points that
18 we had was that we didn't see very many people especially as
19 we compared it to the Palms staff. It just didn't seem like
20 there were any or there were very few. And I -- I do
21 remember that she assured us that their staffing was, you
22 know, what's required or the legal requirement that, you
23 know -- so they meet all -- all of the legal requirements of
24 the State, or something to that effect.

25 Q And tell us why didn't you just move your mom right
26 then? Why didn't you just pick her up and take her out of
27 that building on November 17th when you had that meeting?

28 A I wish I had. Um, you know, we -- we came out of

1 there feeling pretty good. We came out of that meeting
2 feeling like our concerns were heard, that things would
3 change, that things would be better.

4 Q Now, was the topic of Hospice raised at all in that
5 meeting?

6 A It was.

7 Q And, um, was that a bullet point on your wife's, um,
8 agenda or was that something that was raised at some point
9 in the course of the meeting?

10 A You know, I'm not sure. Um, it was certainly raised
11 in the meeting.

12 Q What do you remember about that? Can you tell the
13 jurors what you remember about what was the discussion
14 regarding Hospice in that meeting?

15 A It was -- it was shocking to me. I had just lost a
16 best friend in August of 2008 from cancer, and he had been
17 put on Hospice about six weeks before he passed. And so my
18 only knowledge of that subject was that that's it, it's
19 done, it's final.

20 Um, and so when Nancy brought that up I had -- I had a
21 tough time with that. Um, and she -- she -- I think she
22 asked me -- she saw -- she saw my reaction and she said,
23 What's wrong? And I said, Cause I don't think this is it
24 for my mom. I think we are okay. And I don't know why we
25 want to go down here.

26 And she goes, No, no. She goes, Hospice is a -- you
27 know, I want to say she said it's for a year and then we can
28 renew it or we can drop them off of it. And she reassured

1 me it's really a way that we can keep her here because, um,
2 you know, she -- she brought up the thing about transfer
3 trauma and you don't want to subject your mother to that
4 again. Um, so it was a way that we could get additional
5 resources. When they are on Hospice we can get extra people
6 to help with her care, um, and -- and that part sounded
7 good.

8 We didn't say one way or the other at that point, um,
9 because I was still trying to digest that whole subject.
10 But where they kind of led it -- led us on that was that
11 this was something that would certainly help and benefit my
12 mother.

13 Q Now, after that meeting you told us you felt
14 reassured. Do you remember, um, anything changing after the
15 November 17th meeting until, say, early December?

16 A We -- we didn't see much of anything changing. You
17 know, there were no monumental events, but I didn't see any
18 additional staff. I didn't see that my mom was being -- any
19 kind of activities, any kind of -- it was almost like she
20 just got stuck in her room. And -- and I didn't, you
21 know -- every time I came after that I was hoping, you know,
22 that I would see her walking with her walker or doing an
23 activity and that never happened.

24 Q Do you remember ever being at the facility with, um,
25 Kaiser when the home health, um -- someone from home health
26 was there visiting with her?

27 A I have a vague recollection of one time.

28 Q Okay. And do you remember anything about the

1 interaction you had with the Kaiser home health person?

2 A I remember being kind of excited that they were doing
3 this because they were also -- they had one or two of the
4 caretakers in and they were kind of training, um, some
5 techniques that they could do. And I thought, you know,
6 this is great because obviously it's a win for my mom that
7 now another caretaker, plus, this person is working with my
8 mom. But also how it would benefit any other resident
9 there. You know, that now this caretaker -- this -- this,
10 you know, Emerald Hills employee is -- is also being trained
11 and now that training can certainly, um, convey or transfer
12 over to another resident or many other residents.

13 Q Okay. Now, we heard about your mom moving to Foothill
14 Oaks. Can you tell us how you first learned about that,
15 that your mom was going to be moving to Foothill Oaks, or to
16 a nursing home?

17 A The only communication that we ever got from Peggy
18 Stevenson, outside of that meeting on November 17th, was an
19 e-mail that we got at the very -- I think it was the last
20 day of November, maybe it was December 1st. And she told us
21 that mom had a pressure ulcer and that they thought she
22 probably needed to go to a more skilled level of care. And
23 she said something like, And I don't disagree with that.
24 And I thought, yeah. At this point the concerns about
25 transfer trauma were kind of quickly coming off of the table
26 that now it was becoming more of a -- I -- I just didn't see
27 anything like they were promising, their turn-around, so to
28 speak. So I was like, yeah, let's do this.

1 Q Okay. And then, um, were you -- did you go with your
2 mom when she moved on December 4th to Foothill Oaks?

3 A I did.

4 Q And who else was there?

5 A My father and Kathleen.

6 Q Okay. And did you guys all go together?

7 A Kathleen went on -- on -- they -- they -- mom was in a
8 wheelchair and they put her on like a para transport or, you
9 know, where they can lift the wheelchair right onto the van,
10 and then I drove my father over.

11 Q And, um, how long did you stay?

12 A I -- I -- I don't think I was there an hour or two.

13 Q And what did you do there?

14 A Just, um, we did some -- some documents. Um, I did
15 part of the registration with my dad and Kathleen. Um, and
16 I just remember my dad was kind of overcome, um, over --
17 pretty upset. And, um, so I -- and I -- I was his ride, so
18 I gave him a ride back to Emerald Hills.

19 Q Um, so did Kathleen stay with your mom?

20 A She did.

21 Q And did you hear from Kathleen?

22 A I did. After -- after I took my dad back home, um, I
23 had to go and grab -- pick up the -- the kids, um, and then
24 we went home. And I -- I remember thinking that I would see
25 Kathleen's car there when we got home and it wasn't there.
26 And it was like, hum, maybe she went shopping or something
27 after this whole thing. And several hours passed and
28 finally, um, I got a call from her.

1 Q And what did she tell you?

2 A Um, she scared me. She, um, couldn't talk. Um, she
3 was just sobbing. And I -- and I didn't know if she had
4 been in an accident. Um, I didn't know what happened.

5 Q Was she at some point able to tell you what happened?

6 A She just started to say like, The sores, um, sores are
7 all over her (crying). And she just said, Mom has sores
8 everywhere.

9 Q Did you visit your mom again at the -- at the nursing
10 home after that first day she went -- was transferred there?

11 A I'm sorry, what?

12 Q Did you go visit your mom again after the first day
13 after she was transferred there?

14 A Yes.

15 Q And, um, how frequently would you go see your mom at
16 the nursing home?

17 A Almost every day.

18 Q And did she have a new doctor when you got there?

19 A She did.

20 Q Did you have a talk with the doctor about your mom's
21 condition, her prognosis?

22 A Yes.

23 Q And what did you learn?

24 A He told me that my mom -- my mom's sores were, um --
25 she's not going to come back from that, that, um, her weight
26 loss and her -- the condition that she's in, um, she is not
27 going to return. And he recommended that we, um, just put
28 her on what they called "comfort care."

1 Q And what did you understand that to mean?

2 A Um, that they would just raise her, um, level of
3 medications, her pain medications so that she just didn't
4 feel anything.

5 Q And what did you tell the doctor about that?

6 A That I wanted to talk to, um, to my family, my
7 brother, my sister and my dad and Kathleen.

8 Q Did you, um, have a meeting as a family?

9 A We did. I called Mark, and he flew out a couple of
10 days later. Um, Nancy came up. It was the following
11 weekend and Mark was there and we met in our house and, um,
12 we conceded, we -- we agreed with the doctor that that was
13 probably the prudent road to -- to travel.

14 Q And when did your mom -- when did your mom pass away?

15 A Mom passed away on Valentine's day, February 14th,
16 2009. Excuse me.

17 Q Can you tell us after that, moving your mom to the
18 nursing home, did you ever hear back from Emerald Hills
19 after that about your mom?

20 A Oh, yeah.

21 Q And what did you hear back from Emerald Hills about?

22 A We received multiple phone calls from Emerald Hills
23 just wanting money.

24 Q Did they continue to bill -- bill you for -- after
25 your mom was no longer there?

26 A Yes.

27 Q Did they continue to bill you for beyond December and
28 into January?

1 A Um, it was two or three months.

2 Q Did your dad continue to live at Emerald Hills?

3 A After what?

4 Q After your mom moved?

5 A He did.

6 Q Can you tell us about how your -- did your dad

7 eventually move from there?

8 A Yes. We immediately put in a 30-day notice, um, and

9 he moved in January.

10 Q And where did he move to?

11 A Um, a independent living facility, um, called the Oaks

12 of Auburn.

13 Q And was that right down the street?

14 A It is.

15 Q How did your dad respond to your mom's passing?

16 A Um, he was devastated. He, um, he felt, um, guilty

17 that he didn't do more.

18 Q How has it been for you not having your mom around,

19 Eric?

20 A Very similar. Um, I miss her every day.

21 Q If your mom was here today, what would you tell her?

22 MR. REID: I'm going to object, your Honor. I'm -- I

23 think that is speculative, relevance and 352.

24 MS. CLEMENT: It goes to his loss, your Honor, his

25 loss.

26 THE COURT: He can answer.

27 You can answer.

28 THE WITNESS: Um, I would start off with saying, I'm

1 sorry, that, um, I should have done more to, um, to speak up
2 for her, to defend her when she couldn't do that herself.
3 And I have those dreams all of the time (crying).

4 THE COURT: How much more do you have with this
5 witness? Are you finished?

6 MS. CLEMENT: Yes.

7 THE COURT: Okay. I'm going to -- I think we are
8 going to take our break a little bit early.

9 Ladies and gentlemen, leave your notebooks on the
10 chairs. Remember the admonitions. Let's be back in 20
11 minutes, which will be 5 to. We are in recess.

12 **(The following proceedings were held in open court, outside**
13 **the presence of the jury:)**

14 THE COURT: Okay. We are in recess.

15 MS. CLEMENT: Thank you, Judge.

16 (Recess.)

17 (Court reporter switch.)

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1 (The following proceedings were then had in open
2 court, in the presence of the jury.)

3 THE COURT ATTENDANT: Come to order. Department 45
4 is once again in session. The Honorable Judge Judy Hersher
5 presiding.

6 You may be seated.

7 MS. CLEMENT: And you wonder why I'm standing here.

8 But I did -- with the Court's permission, and I
9 spoke to Mr. Reid about this, if I could reopen for just a
10 small minute.

11 THE COURT: All right.

12 MS. CLEMENT: Thank you, Judge. Sorry.

13 Q. (By MS. CLEMENT) Eric, you told us about getting a
14 packet when you first came to tour with Melissa. And in
15 that packet there were some brochures; is that right?

16 A. Yes.

17 Q. Okay. And you've looked at those brochures, true?

18 A. I did.

19 Q. And did you look at those at the time that -- at or
20 about the time prior to your mom moving into the facility?

21 A. Yes.

22 Q. And did those help you at all in influencing your
23 decision to come -- for your mom to come and your dad to
24 come to Emerald Hills?

25 A. Yes.

26 Q. Okay. So let's put up Exhibit Number 6, which is in
27 front of you there.

28 MS. CLEMENT: Thank you, Terrance.

1 Q. (By MS. CLEMENT) Okay. And this is the inside
2 folder.

3 MS. CLEMENT: Could you bring it up for us.

4 Q. (By MS. CLEMENT) And before you got on the stand
5 today, did we go over the parts of this brochures that you
6 thought were the most important?

7 A. We did.

8 Q. Okay. So we're just going to go through those that
9 we've highlighted.

10 Was this important to you, that your mom, even
11 though confused, she wouldn't have to lose her
12 independence?

13 A. Very much.

14 Q. And how about this section? What was important to
15 you about this?

16 A. This was important to both my mom and dad. The
17 first paragraph there, that they continue to experience
18 love, friendship, hope, fear and sorrow; that basic
19 emotions are going to continue; that my parents could still
20 live as normal a life as possible.

21 Q. And what else, if anything, about this section was
22 important to you?

23 A. Um, you know, this next section really started to go
24 into -- and they go into it a little further in other
25 areas. But, you know, they were going to design this
26 unique individualized service plan. And we gave them a lot
27 of information, a lot of things that my mom particularly
28 liked to do. And we were hopeful that that would come to

1 fruition, that those kind of things that she was interested
2 in would -- would be carried out there at the facility.

3 Q. Okay. And had you had experience at The Palms with
4 regard to this individualized service or care plan?

5 A. Yes.

6 Q. And what was your experience there?

7 A. Um, they had my mom do a lot of the arts and crafts
8 stuff that we talked about. And there were multiple
9 projects that we got to take home as her kids. I'm sorry.

10 Q. It's all right.

11 A. My mind just --

12 Q. That's okay. We'll just moved on to the next
13 section. That's fine.

14 And what was important about this section that you
15 want us to highlight?

16 A. You know, my mom was a well-educated, very
17 independent person. And so this spoke to me when I read
18 that; that my mom is in the driver's seat; that my mom
19 still was afforded the dignity and respect that certainly
20 she had earned over her lifetime of many different
21 achievements and that -- I liked that concept. This
22 spoke -- you know, this put a thing in my head that I could
23 see that -- I liked that we could make her feel like she
24 was in the driver's seat. We're there for support. We're
25 there to go along with her. So I -- that, I liked.

26 Q. Okay. And how about this section? Why did you want
27 us to highlight this section?

28 A. Again, it was brought up on numerous occasions with

1 us while we were looking at this facility, amongst others,
2 that, you know, their staff had this special training. And
3 the Join Their Journey stuff was highlighted quite a bit
4 with us. And, you know, it was -- it was reiterated that,
5 you know, these are the kind of stimulations that people
6 suffering from dementia or Alzheimer's, you know, need to
7 stay active, to stay with us.

8 MS. CLEMENT: Okay. Erik, could you go to the next
9 brochure.

10 Q. (By MS. CLEMENT) So now we're going to move to the
11 next brochure, which was the Join Their Journey brochure.

12 MS. CLEMENT: Could you bring that up for us, Erik.

13 Q. (By MS. CLEMENT) So I think we already talked about
14 this. This is kind of a repeat of the other.

15 MS. CLEMENT: Erik, can you take us to the next
16 section.

17 Q. (By MS. CLEMENT) What was important that you want
18 us to talk about in this section?

19 A. Um, this was big, too. "The collaboration between
20 family and staff members incorporates care and support for
21 all, the resident and the -- the resident, family, and
22 staff members." (As read.)

23 I liked that concept that we were -- that this
24 was -- that we were together. And I can't remember if it's
25 in this brochure or the other one. But I wanted to learn a
26 lot more about what my mom was suffering from. And they
27 offered that as, you know -- well, at least they offered it
28 in their brochure.

1 Q. Okay. And why did you want us to highlight this
2 section?

3 A. I knew that my mom was scared. There were a lot of
4 things that she -- through the dementia, through the
5 Alzheimer's, she was frightened. And, again, having a
6 facility, a company that understood that was reassuring to
7 me, that they -- that they addressed this particular issue.

8 And, again, you know, the "Our staff members are
9 trained to be pro-activity directors" certainly led me to
10 believe that that was a big -- you know, that Emerald Hills
11 was a activities-focused facility, which is something that
12 was important to us as we were deciding here.

13 Q. And was that like what you'd experienced at
14 The Palms?

15 A. Yes.

16 Q. And what was important about this for you?

17 A. Um, yeah, these were some bullet points here. The
18 ongoing staff and family training. Again, I liked the
19 part, obviously, for the staff. But, also, that we were
20 going to be able to partake -- to participate in training,
21 how we could help. Kind of like when I said when Kaiser
22 brought in the physical therapist. I -- you know, that
23 was -- that was great.

24 The, you know, affiliation with
25 community-based experts and clinicians, that they had
26 resources outside of themselves, that it was something
27 else. Again, that they were cutting edge, you know, the
28 most recent research-based care techniques. And then the

1 buzz words of "commitment to a quality program."

2 MS. CLEMENT: Okay. And let's just look at that
3 last Exhibit 8, Erik.

4 Q. (By MS. CLEMENT) This was about the
5 Join Their Journey Support Group?

6 A. Correct.

7 Q. And why was this important to you?

8 A. This one -- like I said a moment ago, members of the
9 group get together to share, gather information, just be
10 with friends who are going through the same thing. I found
11 that that -- or I thought that that would be a blessing, a
12 benefit, certainly to my wife and I, who were here locally,
13 that we could participate in that. So, yeah.

14 MS. CLEMENT: Okay. Anything more that we
15 highlighted in this one?

16 THE WITNESS: I'm sorry?

17 MS. CLEMENT: No just this one. Okay.

18 Q. (By MS. CLEMENT) And once your mom moved into
19 Emerald Hills, did you ever -- did anybody ever talk to you
20 about a support group? Was there a support group there?

21 A. Outside of when we were -- I don't even know what
22 the word is, being recruited or -- you know, they were
23 trying to highlight their facility, their program to us,
24 that was the only time I've ever been introduced to this.

25 Q. Okay. Thank you.

26 MS. CLEMENT: Thank you, Terrance.

27 Q. (By MS. CLEMENT) And you also reviewed their
28 website materials?

1 A. I did.

2 Q. Okay. And what about those materials made you feel
3 good, or how did you feel when you read them anyway?

4 A. Yeah. They had a lot of background information
5 about the -- the -- I'm trying to think of the word, like
6 the CEO and the executives of Emeritus and their ongoing
7 commitment and concern to, you know, the elder population.

8 I remember one of the web pages had all these logos
9 of different companies they had affiliated with. So,
10 again, it just added some credibility this company was --
11 it was a good company.

12 Q. And was there anything in the contract -- I keep
13 saying "contract." I apologize.

14 The admission agreement, was there anything in there
15 that helped influence you or that you felt good about with
16 regard to your mom's care?

17 A. There were a number of things. I remember in
18 particular they addressed -- there was a cost breakdown
19 worksheet where they added up all the costs that my mom was
20 going to incur. And one of the `a la carte things that
21 certainly was great was that we would be able to hire some
22 one-on-one care, if needed. They actually promised us
23 somewhere, and I don't remember where, that they could do
24 doctor visits. They would -- I mean, they would transport
25 my mom to doctor visits, if needed. They would do all
26 these things. And I learned later that it was a -- kind of
27 an `a la carte. It would cost a little bit but it was very
28 -- and I thought, *That's a great feature. I like that.* So

1 that was another thing that certainly attracted us to
2 that -- to them.

3 MS. CLEMENT: Thanks, Eric.

4 Thank you, Judge.

5 THE COURT: Mr. Reid.

6 CROSS-EXAMINATION

7 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
8 Defendant:

9 Q. A big stack of papers. Don't worry. I should be
10 able to get done here by the end of the day for sure.

11 A. Okay.

12 Q. Mr. Boice, I do feel for your loss. And please
13 understand, I have to ask some questions here. I don't
14 intend to be insensitive.

15 I want to go back a little bit and just follow up on
16 some of the history concerning your mom and your
17 relationship with your mom. Okay?

18 A. Okay.

19 Q. In 2004, that's when your mom executed that durable
20 power of attorney document, correct?

21 MS. CLEMENT: Exceeds the scope.

22 THE COURT: Overruled.

23 THE WITNESS: I'm not sure.

24 Q. (By MR. REID) All right. Would you mind pulling
25 Exhibit 2 from the shelf behind you there.

26 Do you have that in front of you? And if you could
27 turn to page MC3.

28 A. I don't know how these are set up. I'm sorry. You

1 would think I would know, but...

2 Q. Okay. Okay. I think --

3 A. Did I grab the wrong --

4 Q. Oh, yeah. We're in Volume II.

5 A. Oh. Two.

6 Q. It's Exhibit 2. And it would be in volume --

7 THE COURT: The very first volume, I think.

8 Q. (By MR. REID) Volume I. Here. There we go.

9 A. Okay.

10 Q. All right. Page MC3, in Exhibit 2, through MC9.

11 Do you recognize that as the Durable Power of

12 Attorney form related to your mom, Joan Boice?

13 A. Hmm, most of it. There's an extra page in here that

14 I don't believe belongs to it.

15 Q. Okay. Maybe they got out of order there.

16 MR. REID: Your Honor, would it be okay if we

17 display this document? I believe it's been admitted into

18 evidence.

19 THE COURT: It is admitted.

20 MR. REID: Let's go ahead and put up the first page.

21 Q. (By MR. REID) Okay. And you've become familiar

22 with this -- this document over the years, correct?

23 A. I have.

24 Q. What's your understanding of this document?

25 A. My parents went to a seminar at their church and --

26 where an attorney was there talking about setting up wills

27 or trusts or something, and I believe that's where this

28 document was -- was done.

1 Q. Okay. And -- and have you come to understand what
2 the purpose of the document was?

3 A. Of this document?

4 Q. Correct.

5 A. Um, it would -- to designate power of attorney.

6 Q. Okay. Let's look at MC5.

7 So in the years of 2007 and 2008 in particular, was
8 it your understanding that your mom had designated your dad
9 as an attorney in fact by way of this document? Or did you
10 have an understanding?

11 A. I didn't know anything about this until, I believe,
12 The Palms. I didn't even know this existed.

13 Q. Okay.

14 MR. REID: And if you could pull that back out.

15 Q. (By MR. REID) Did you become aware that at some
16 point in time your mom had appointed first you and then
17 your brother Mark to make decisions on her behalf if -- if
18 your dad was not willing, or able, or available to make
19 decisions?

20 MS. CLEMENT: Objection; misstates the document.

21 THE COURT: Well -- he can answer the question. The
22 objection is overruled.

23 THE WITNESS: Yeah, it wasn't me and then my
24 brother. It was jointly, my brother and I.

25 Q. (By MR. REID) Okay. Right. Oh, you're right.
26 Down here.

27 A. Yes.

28 Q. In order named and jointly. They checked two boxes

1 for that.

2 A. Correct.

3 Q. But did you become aware at some point in time that
4 your mother had designated you as a person with authority
5 to make decisions on her behalf if she became unable to do
6 that?

7 A. Not if my dad was still here.

8 Q. Okay. So in 2007 and 2008, as far as you were
9 concerned, your dad was the primary decision-maker for your
10 mom because she was not able to make decisions for herself?

11 A. Correct.

12 Q. Now, directing your attention to MC6, the next page,
13 do you recognize that as your mom's signature and the date
14 of July 24th, 2004?

15 A. Yeah, I believe that's my mom's signature.

16 Q. And then on MC7, the document asks for direction
17 from the person signing the document of the level of
18 intensity of care the person would want should they become
19 incapacitated, right?

20 A. Yes.

21 Q. And do you recognize your mom's initials there as
22 choosing not to -- not to prolong life?

23 A. I don't know if I've seen her initials too much, but
24 I have no reason to believe those aren't hers. So, yeah.

25 Q. Okay. And then on MC -- page eight, MC8, do you
26 recognize your mom's signature? And she signed it in Santa
27 Clara County?

28 A. Correct.

1 Q. Is that where -- is that where the family -- your
2 family's home was, your mom and dad's home?

3 A. No.

4 Q. What was in Santa Clara County, do you know?

5 A. I have no idea.

6 Q. Okay.

7 A. I don't know.

8 Q. All right.

9 A. I think -- just to clarify that?

10 Q. Yeah.

11 A. The attorney's office was in San Jose, so that's the
12 only -- because I'm pretty sure they did this at the
13 church, which would have been in Alameda County. So I
14 don't know why it says Santa Clara.

15 Q. Okay. Fair enough.

16 And you've testified --

17 MR. REID: Thank you. We can turn on the lights,
18 Mr. Taylor. Thank you.

19 Q. (By MR. REID) So that was in 2004. And then kind
20 of fast-forwarding a little bit. Your folks moved into
21 The Palms in 2007; is that right? Do I have that right?

22 A. Yes. March of 2007.

23 Q. Okay. Now, do you recall in -- in March of 2007,
24 when your mom and dad moved into The Palms, that you were
25 actually signing some of the documents as the guarantor or
26 the responsible party for them?

27 A. I -- for them?

28 Q. For your mom?

1 A. I was going to say, I think I signed for my mother,
2 some.

3 Q. Okay. All right. And did you do that in the
4 capacity of her -- as her power of attorney?

5 A. No.

6 Q. Did you know what a power of attorney was in March
7 of 2007?

8 A. No.

9 Q. And I think you testified the only thing you knew
10 about power of attorney was that somebody from Kaiser said
11 you should write it by your name so you could get
12 documents, correct?

13 A. Yeah, they -- yeah. But they just said POA.

14 Q. POA. You didn't even know what "POA" stood for?

15 A. No, not at that time.

16 Q. Okay. And I'm sorry to jump around, but if you
17 wouldn't mind going to Exhibit 5003. Those are some
18 records from Kaiser.

19 A. Same one?

20 Q. It's going to be behind you there.

21 MR. REID: If I could approach, your Honor?

22 THE COURT: Okay.

23 Q. (By MR. REID) I'll move this for now.

24 A. Okay.

25 Q. Okay. Now, I'd like you to turn to page 0088.

26 There was a -- the page numbers at the bottom say 5003, and
27 then dash, a bunch of zeros.

28 A. Okay. 88?

1 Q. 88.

2 MR. REID: And I believe that's in evidence, your
3 Honor. May I put that page up?

4 THE COURT: Okay.

5 MR. REID: Thank you.

6 All right. If you could just highlight the top
7 portion there for us, Ms. Ford.

8 Q. (By MR. REID) Okay. This is a note concerning a
9 visit between your mom and Dr. Awan of March 26th, 2007.

10 Do you see that?

11 A. Yes.

12 Q. Okay. And do you recall that this was about the
13 time when your mother was first becoming established with
14 Dr. Awan as her treating physician?

15 A. Yes, I think this was the first appointment we had
16 with her.

17 Q. Okay. And if you -- so we have then -- we have her
18 list of diagnoses, which it does include Alzheimer's
19 disease at that point in time, correct?

20 A. Correct.

21 Q. And prior to March 26th of 2007, do you have a
22 memory of when your mom was diagnosed with Alzheimer's
23 disease?

24 A. It was late in 2006.

25 MR. REID: If you could go to the next portion,
26 please, Ms. Ford.

27 Q. (By MR. REID) Okay. And so continuing down the
28 page, it looks like she is there to establish a new

1 relationship with Dr. Awan, which is a female doctor,
2 correct?

3 A. Correct.

4 Q. And according to the note, it says: Patient in
5 wheelchair, accompanied by husband, son and
6 daughter-in-law.

7 Do you have a memory of going to that first visit
8 with your mom to see Dr. Awan?

9 A. Looking at these notes here, I remember some of the
10 thing, but I don't specifically have great recollection of
11 the actual meeting.

12 Q. Okay. Do you have a memory of -- well, where --
13 where was Dr. Awan's office?

14 A. Um, it was -- I forget what they call it. It was on
15 Kirby, just off of 80. There's a specific title for it,
16 Roseville something.

17 Q. In relation to The Palms, how close was Dr. Awan's
18 office?

19 A. Ten minutes.

20 Q. And how about in relation to Emerald Hills, how
21 close was Dr. Awan's office?

22 A. Thirty, thirty-five minutes.

23 Q. Okay. I do want to ask you a couple questions about
24 this visit. Help me -- if you remember, it's fine. If you
25 don't, just tell us you don't remember. Okay?

26 Dr. Awan noted that your mom had the above diagnoses
27 that we looked at. And she said your mom was on
28 medications. And she said your mom had recently moved to

1 The Palms, which we know is just a couple weeks earlier,
2 right? Correct?

3 A. Yeah. I don't remember the specific date, but it
4 was earlier.

5 Q. All right. And then she also noted that prior to
6 that your folks had been living in San Lorenzo.

7 A. Correct.

8 Q. Now, Dr. Awan noted that the family was here today
9 because other family members, not living in California,
10 were concerned that your mom had not been diagnosed
11 properly and was getting the wrong medicines.

12 Do you remember that little controversy back in
13 March of '07?

14 A. I do. And we talked about this in the deposition,
15 yes.

16 Q. Right. Help the jury understand what that was.

17 A. My brother's wife, Becky, had a tough time -- very
18 much like my wife Kathleen, she was very, very close to my
19 mom, and she had a difficult time accepting that mom had an
20 incurable disease basically. And she wanted us to try to
21 investigate further, to rule -- you know, that maybe
22 this -- the symptoms that were -- that led to that
23 diagnosis could be organic based, there was something
24 happening that's more temporary. So, yeah, she wanted us
25 to pursue this further.

26 Q. Okay. And Dr. Awan noted that your mom -- your
27 mother had the compression fracture and was in some pain
28 which had been difficult to control. So she was on

1 morphine, regular doses of morphine, and that was providing
2 good results.

3 Is that your memory?

4 A. Yes.

5 Q. Okay. But was it your sister-in-law that had some
6 concern that maybe morphine wasn't good for her at that
7 time?

8 A. No, I don't think that was my sister-in-law.

9 Q. Okay. Let's go to the next section because I think
10 it describes it a little bit more.

11 A. Yeah.

12 Q. Okay. Actually, it was your dad that had some
13 concern about the morphine at that point, right?

14 A. Yes.

15 Q. Tell the jury what that concern was.

16 A. I think my dad's understanding of morphine was -- it
17 probably came from me as a precursor to heroin, meaning
18 just my training and experience. But he thought morphine
19 was not a good drug, that it was a highly addictive drug.
20 And he was just concerned that my mom would become addicted
21 to it if we had her on it.

22 Q. Okay. But Dr. Awan apparently was reassuring that
23 although there is an addiction potential, that your mom's
24 comfort was really the primary consideration at that point
25 in time, right?

26 A. That's true.

27 Q. Okay. Then apparently your mom had been having some
28 issues with bowel movements. So there was a discussion

1 about stool softeners. I don't know if you remember that.

2 Do you?

3 A. I probably tuned out for that part.

4 Q. Okay. And then Dr. Awan advised: Continue present
5 meds for blood pressure control and her osteoporosis.

6 Were you aware that your mom had been diagnosed with
7 osteoporosis?

8 A. I don't believe I was, no.

9 Q. And do you know what osteoporosis is?

10 A. I think that's the curvature of the spine, so...

11 Q. Okay. It has to do with the bones and weakening of
12 the bones.

13 A. Okay.

14 Q. Did you understand that there had been a diagnosis
15 of weakening of your mom's bones?

16 A. No.

17 Q. Okay. Then there was a discussion about, "Aricept
18 was discontinued, as they felt it did not help her.
19 Explained Aricept delays decline in cognition function in
20 some patients for a limited period of time."

21 Do you have a memory of that discussion with
22 Dr. Awan?

23 A. I do.

24 Q. Tell the jury about that discussion.

25 A. We had been on -- my mom had been on Aricept for six
26 or eight months, I believe, up to that point. And this was
27 a drug that -- back in Hayward, either the neurologist or
28 one of her doctors recommended that we could try it. I

1 believe that Dr. Awan said that less than -- and, again,
2 this comes off the top of my head. I think it was less
3 than ten percent of any Alzheimer's/dementia patients even
4 respond even slightly to this drug. And this was an
5 out-of-pocket drug that was costing a lot of money every
6 month. And we -- we didn't see any real benefit to it.
7 So, yeah.

8 Q. Okay. So you said that it was a drug that she'd
9 been put on at Hayward. You mean Kaiser Hayward? Is that
10 what you were saying?

11 A. Yeah, that would be the only -- yeah.

12 Q. Okay. And you understood it to be a drug that's
13 given to try to head off a decline in the cognition or
14 somebody's mental functions when they're diagnosed with
15 Alzheimer's?

16 A. Yeah. It can halt the effects.

17 Q. Okay. But Dr. Awan was not very positive about the
18 drug and recommended not continuing it; is that correct?

19 A. Correct. Yes.

20 Q. Now, the -- here, Dr. Awan said: Had a long
21 discussion with family about the course of dementia.

22 And I want to ask you, what's your recollection
23 about the long discussion that you had with Dr. Awan on
24 March 26th, 2007, about the predicted course that you could
25 expect with your mom's diagnosis of dementia?

26 A. I don't remember really a discussion about -- other
27 than it was a progressive disease that would progress.

28 Q. Okay. At this point in time, in March of 2007, your

1 folks had just moved into The Palms. They were living in
2 the same apartment at that point in time, right?

3 A. Yes.

4 Q. Okay. I think it was a couple months later that
5 your mom moved to the memory care portion of The Palms,
6 right?

7 A. Correct. It was early May, I think. Yeah.

8 Q. Okay. So as of March 2007, did you have any
9 understanding of what this diagnosis of Alzheimer's disease
10 would mean in terms of the course of your mom's health?

11 A. I don't think so. Not really. I'm not sure I
12 understand the question, though.

13 Q. I'm trying to -- that's fair. And please let me
14 know if you don't understand.

15 I'm trying to understand whether -- as of March of
16 2007, your mom had been diagnosed with Alzheimer's disease.
17 She had been tried on Aricept. It hadn't held. The
18 primary focus at that time was your mom's comfort.

19 I'm trying to understand if you had a sense at that
20 time, particularly based on the meeting with Dr. Awan, of
21 what your mom's course would like going forward. What was
22 her prognosis is another way to ask it? Any idea?

23 A. Other than -- you know, we just wanted my mom to
24 live as normal and as long a life as possible.

25 Q. Okay. And so did you have any understanding of what
26 normal would be for your mom, considering her diagnosis?

27 A. That she would be afforded the dignity and respect
28 that, you know, a person going through this -- this

1 process -- you know, that she would get the best treatment
2 possible --

3 Q. Sure.

4 A. -- and care.

5 Q. Did you have an understanding of what Alzheimer's
6 disease would do to people that were diagnosed with it in
7 March of 2007?

8 A. What it would do?

9 Q. Yeah. What did -- what's the -- what does the
10 disease cause someone as of March of 2007?

11 A. I knew that it would --

12 MS. CLEMENT: Objection; it's vague.

13 THE COURT: Could you rephrase, please.

14 MR. REID: Yes.

15 Q. (By MR. REID) What did you know about Alzheimer's
16 disease as of March of 2007, following this discussion with
17 Dr. Awan?

18 A. Very little, other than it was kind of -- it
19 would -- you know, like the things we were experiencing
20 with her -- with her short-term memory, she would continue
21 to have troubles with that.

22 Q. Did you ever go on-line and do any research about
23 Alzheimer's disease to get more information about it?

24 A. A little bit, yes.

25 Q. Had you done it as of March, 2007?

26 A. I don't remember. But -- I would say, yes, but I'm
27 not sure.

28 Q. So you also said that your expectation is that she

1 would live as long as possible.

2 Do you recall saying that a minute ago?

3 A. I'm sorry. What?

4 Q. You said that your expectation is that she would
5 live with dignity and as long as possible, right?

6 A. I believe -- yes.

7 Q. Okay. And I wanted to ask you, what was your
8 understanding, if you had one, of what -- whether your
9 mom's life expectancy was affected at all because of her
10 diagnosis, as of March of 2007?

11 A. Do I think her life expectancy was affected?

12 Q. I'm going to ask the question differently. Okay?
13 Because I want to make sure we're communicating.

14 As of March of 2007, after this meeting with
15 Dr. Awan --

16 MR. REID: Sure. We can get the lights. Thanks,
17 Mr. Taylor.

18 Q. (By MR. REID) As of March of 2007, based on your
19 meeting with Dr. Awan, based on your research of
20 Alzheimer's disease, did you have any understanding as to
21 whether the disease would impact your mom's life
22 expectancy?

23 (Pause.)

24 THE WITNESS: I'm not sure.

25 Q. (By MR. REID) Okay. And then Dr. Awan also advised
26 that your mom needed to have an advanced directive in
27 place, correct?

28 A. I've got to make sure. Yes, it's there.

1 Q. Well -- and we saw that your mom had already elected
2 for no heroic measures, correct?

3 A. Yes.

4 Q. And then do you recall that in December of 2007 that
5 your dad, on behalf of your mom, executed a CPR directive,
6 where he opted that no CPR should be done for your mom if
7 her heart stopped?

8 A. Yes, that's familiar.

9 Q. Okay. When -- how often did you -- were you
10 visiting your mom when she lived at The Palms?

11 A. Two, three times a week, four maybe.

12 Q. So was it about --

13 A. I would say more like two or three.

14 Q. Was it about the same when she was living at
15 Emerald Hills?

16 A. Initially, I would say that. I probably started
17 going a little bit more when we started having a little bit
18 of concern.

19 Q. Okay. Start -- let me make sure I understand.

20 Your visits to The Palms were about the same as your
21 visits to Emerald Hills initially, but later on, at
22 Emerald Hills, you started visiting a little more often?

23 A. Yeah, maybe. Yeah.

24 Q. Okay. Now, when your mom was at The Palms, did you
25 observe any -- any -- from your perspective, any decline in
26 her functioning?

27 A. At The Palms?

28 Q. Right.

- 1 A. Over the year-and-a-half?
- 2 Q. Correct.
- 3 A. Um, yeah. She got slower.
- 4 Q. What does that mean, "she got slower"?
- 5 A. Physically, walking with the walker. She -- you
- 6 know, it took us longer to go from her room to the dining
- 7 room. You know, it used to be a minute-and-a-half and then
- 8 it was two -- you know, and these are arbitrary numbers.
- 9 Q. Sure.
- 10 A. Now it was two minutes. It was a little slower.
- 11 Q. It was a little easier for you to keep up.
- 12 A. Yeah. No kidding.
- 13 Q. Okay. How about -- in terms of her cognition, her
- 14 ability to -- her memory, let's talk about that.
- 15 Did her memory -- did you notice any changes in her
- 16 memory during that year-and-a-half?
- 17 A. She communicated less as time went on, verbal
- 18 communication. She -- when we first went in there, she
- 19 could construct sentences. And at the end of the
- 20 year-and-a-half, the full sentences were pretty much --
- 21 although, there were times when she would do it.
- 22 Q. Sure.
- 23 A. And there were times when -- it was weird. There
- 24 were these moments of -- I don't know what they call it,
- 25 but lucidity, so to speak.
- 26 Q. Okay.
- 27 A. So...
- 28 Q. So generally over the year-and-a-half her ability to

1 speak in full sentences, you observed, was diminishing.

2 True?

3 A. Yes.

4 Q. And by the end at The Palms, was she -- from your
5 perspective, was she speaking in full sentences?

6 A. Not in full sentences, but yes and nos. And she
7 could mimic. She could copy. She was good at that.

8 Q. Was -- in terms of her cognition, did there appear
9 to be -- tell us about your observations in terms of
10 confusion. Did she -- did she appear confused over the
11 course of the time there at The Palms?

12 A. You know, I'm trying to think of a situation where I
13 would even have assessed her confusion. Um, I can't think
14 of a specific time. I mean, yeah, I knew she was confused,
15 but I can't think of a good example for you.

16 Q. And how about like her ability to understand where
17 she was? Did you have any impression of whether she knew
18 where she was when she was at The Palms?

19 A. Again, that's a hard -- I always expected her to
20 complain about where she was, and she never did. She never
21 said, "When do I go home?" So, yeah, I'm not sure where
22 she was in that regard.

23 Q. During that time at The Palms, and focusing in at
24 the end, personally, did you think that it would have been
25 safe for your mom to move back into a private home?

26 A. At the end of --

27 Q. Right.

28 A. -- of The Palms?

1 Q. At the end of The Palms, before she moved to
2 Emerald Hills?

3 A. Okay. So a private home? Like just her and my dad?

4 Q. Right. Your mom and your dad moving back into a
5 single family home.

6 A. No.

7 Q. And why not?

8 A. Mainly, for the reason that we helped move them
9 there in the first place. Mom just needed extra care,
10 extra attention.

11 Q. Did you have an opinion or an impression that if
12 your mom got lost she'd be able to find her way back home,
13 at the end of The Palms?

14 A. If she got lost, like she walked out of the
15 facility?

16 Q. Right.

17 A. Yeah, I think she may be able to do that. If she
18 was in a car, yeah. Number one, they didn't know
19 Roseville, so her knowledge of that area was not great.
20 But if she was a block away, she may be able to -- I don't
21 know, though, for sure.

22 Q. Okay. That's fine.

23 Let's -- focusing on the last month or so when she
24 was at The Palms. Did you share any meals with your mom?

25 A. I don't specifically remember. But meal time was --
26 we -- I did a lot of meals with my mom.

27 Q. Okay. When you say you did a lot of meals, what
28 does that mean? That you sat next to her while she ate, or

1 you ate with her or --

2 A. Or we took her out. Yeah. So, yeah. Mostly they
3 were there and I sat next to her. And usually my dad was
4 there, too. So the three of us would...

5 Q. All right. And while your mom was at The Palms, did
6 you observe that she was able to feed herself?

7 A. At one point, yeah. Again, I shared earlier that
8 she was able to pick up foods again, and they actually did
9 train her. And she used a fork a few times. And I'm not
10 sure. I think she kind of lost that again.

11 Q. At The Palms?

12 A. Yeah. Yeah. There was a period there where she was
13 using it. And then near the end she wasn't using it again,
14 so...

15 Q. So that was something that kind of came and went,
16 the ability to feed herself, from your observations?

17 A. Yeah, she could still feed herself a little bit with
18 her -- you know, if they were simple -- and I'm thinking --
19 I remember apples. I remember they would slice apple and
20 she could take an apple and...

21 Q. How often would you take your mom out of The Palms
22 and out to dinner or on a --

23 A. At The Palms?

24 Q. Yeah.

25 A. Personally, or my father?

26 Q. You personally.

27 A. Me personally, every couple weeks probably. Um, I'd
28 say -- you know, we'd -- put Kathleen and the kids in the

1 car and we're going out to dinner with grandma and grandpa.
2 Fresh Choice was always there.

3 Q. Which one?

4 A. Fresh Choice in Roseville. That's where they loved.

5 Q. What did your mom like to eat there?

6 A. Just salad bar. Yeah.

7 (Laughter.)

8 THE WITNESS: Boy, that keeps coming around, doesn't
9 it?

10 Q. (By MR. REID) And after your mom moved to
11 Emerald Hills, did you ever take her out of the -- out of
12 Emerald Hills to go out to eat?

13 A. Not as much. Um, I can only vividly recall one
14 time.

15 Q. Okay. Can you tell us about that one time that you
16 remember taking your mom out to eat when she was living at
17 Emerald Hills.

18 A. It was -- it must have been my son's birthday in
19 October. And we went to Black Angus, which now is a
20 Chicago Fire, on Eureka in Roseville.

21 Q. And what's your son's birthday?

22 A. October 23rd.

23 Q. And what happened when you went out to dinner?

24 A. It was difficult.

25 Q. And why was that?

26 A. Mom required a lot of attention. She wasn't mobile.

27 Q. What do you mean, "she wasn't mobile"?

28 A. Um, she couldn't walk at all at that point.

1 Q. Okay. And was that the first time that you had
2 noticed -- observed that your mom couldn't walk, was around
3 October 23rd?

4 A. I never saw her walk after the first few weeks at
5 Emerald Hills. Although, I was told that she was, or
6 that -- I would inquire as to why she was already in bed at
7 5:00 p.m., and they'd say, you know, she's tired. She had
8 a busy day.

9 Q. Mm-hmm. So when you say that she wasn't able to
10 walk on October 23rd, describe that for us. What did you
11 observe, or how did you make that determination?

12 A. Um, that determination? Because I had to lift her
13 into the car, out of the car into a wheelchair.

14 Q. And did you -- did you bring -- first of all, was
15 your dad with you when you guys went out to dinner?

16 A. Yes. Yeah.

17 Q. Okay. And did you discuss with your dad your
18 observation, that it didn't appear that your mom was able
19 to walk on the 23rd of October?

20 A. I'm sorry. What?

21 Q. Did you have any conversation with your dad about
22 your observation that your mom couldn't walk on the 23rd of
23 October?

24 A. I don't recall.

25 Q. Did your dad say anything to you about your mom's
26 ability or lack of ability to walk on October 23rd?

27 A. And I'm going to -- I'm not -- well, I'm certainly
28 not sure that it was October 23rd. That is my son's

1 birthday, but I'm not sure it was that exact date, so...

2 Q. Okay.

3 A. And I'm -- the reason I'm having trouble tracking
4 your questions -- because I'm really trying to go -- if --
5 because I know September 22nd is my daughter's birthday and
6 that was the night my mom fell, and I know we were having a
7 little party at our home. And I'm not a hundred percent
8 sure that this outing -- I remember that was our last
9 outing with my mother. And I'm not sure when that was, to
10 be honest. I'm not --

11 Q. So was it around October 23rd, or you just don't
12 remember?

13 A. Yeah, I'm just struggling with -- and I don't want
14 to say something that isn't true, so...

15 Q. So you just remember this time going out to dinner
16 is the last time you went out to dinner, but you don't have
17 any recollection of when that was?

18 A. Correct.

19 Q. Okay. But you did observe that your mom, from your
20 observation, wasn't able to walk?

21 A. Yes.

22 Q. And did you have a conversation with your dad about
23 that?

24 A. Like, "Mom can't walk"?

25 Q. Or ask him, "Have you noticed anything about this?"
26 Or did he say anything? "Look, I'm worried about your mom
27 not walking." Anything like that?

28 A. On that occasion, no. But he did address that with

1 me a little bit on other occasions.

2 Q. Okay. Now, when you went out to dinner and you made
3 these observations, do you remember if that was before
4 November 4th when you went to see Dr. Awan, or after
5 November 4th when you went to see Dr. Awan?

6 A. Hmm. I'm not sure.

7 Q. Now, there's been -- you were asked some questions
8 and there's been testimony about an e-mail -- or a fax that
9 went to Dr. Awan on October 14th -- you've seen it here in
10 trial -- about Nanette Read's observations about your mom's
11 foot.

12 A. Correct.

13 Q. And there -- Dr. Awan requesting that your mom be
14 taken in for an x-ray.

15 Do you recall that?

16 A. Yes.

17 Q. Okay. Now, you never received a call about
18 scheduling an x-ray.

19 A. Correct.

20 Q. And did your dad receive a call about an x-ray? Did
21 he communicate that to you?

22 A. He wouldn't have received a call. They would tell
23 him. But, no. And I guarantee he didn't, because I would
24 have heard about it very quickly.

25 Q. All right. So as far as you know, Kaiser never
26 called anybody in your family to schedule an x-ray for your
27 mom's foot, correct?

28 A. Yeah. They just gave that information to

1 Emerald Hills.

2 Q. Well, how do you know they gave it to Emerald Hills?

3 A. Didn't I see the document?

4 Q. Oh, okay. So you're basing it on the document, that
5 that order was given to Emerald Hills. Right?

6 A. Yes.

7 Q. Okay. And you -- but you didn't know about that at
8 the time?

9 A. Right.

10 Q. Okay. My question is: Are you aware of Kaiser
11 reaching out to anybody in your family to schedule an
12 appointment to bring your mom in for an x-ray around
13 October of 2008?

14 A. No.

15 Q. Okay. Up to that point in time, October of 2008,
16 other than the transfer to the emergency room on September
17 22nd, which you mentioned a few minutes ago, was there ever
18 a time that your mom was taken to Kaiser for any kind of
19 appointment by anyone other than a member of your family,
20 to your knowledge?

21 A. Not to my knowledge.

22 Q. After October 14th of 2008, was there ever a time
23 that your mother was taken for an appointment at Kaiser by
24 anyone other than someone in your family?

25 A. Not to my knowledge.

26 Q. Okay. If you could pull up Exhibit 5003.

27 Do you have that in front of you there?

28 A. Mm-hmm.

1 Q. Okay. Great. Would you mind turning to page 282.
2 Okay. Actually, let's go ahead and turn to 283.

3 Do you have that in front of you?

4 A. I do.

5 Q. All right.

6 MR. REID: Your Honor, may we display that page?

7 THE COURT: Yes.

8 MR. REID: All right. If you could bring up the
9 bottom half of the page, Ms. Ford.

10 Q. (By MR. REID) So this is the -- Dr. Awan's note
11 with regard to that visit on November 4th of 2008.

12 Do you see that?

13 A. I do.

14 Q. Okay. And this was the appointment where you -- it
15 says: Patient with known advanced dementia accompanied by
16 son and husband.

17 Right?

18 A. Correct.

19 Q. Okay. And do you recall Dr. Awan talking to you
20 about the fact that she believed your mom had advanced
21 dementia in November of 2008?

22 A. No.

23 Q. Did you have an understanding one way or the other
24 whether your mom's dementia was advanced as of that point
25 in time?

26 A. No.

27 Q. Okay. And then Dr. Awan notes: She has had
28 mobility problems for the past two or three months, or

1 maybe more.

2 Do you have an understanding of what Dr. Awan was
3 talking about there?

4 A. Um, not really.

5 Q. Did you -- when you took your mom to see Dr. Awan on
6 November 4th, did you take any records from Emerald Hills
7 with you to give to Dr. Awan and review?

8 A. I don't know. I don't remember.

9 Q. Do you remember talking to Dr. Awan and her --
10 giving her what we would call "a history" or her getting
11 information from you and your dad about, "So what's been
12 going on with your mom?"

13 A. No, I don't remember that.

14 Q. Was -- when you would go to take your mom to see the
15 doctor, was that part of the normal visit, where the doctor
16 would say, "Okay. Tell me what's going on," and you would
17 give information about what you knew?

18 A. Um, this one was more -- just specific for the --
19 for the not being able to bear weight on her leg. I don't
20 remember going into a history or anything like that.

21 Q. Okay. So where she got the information that your
22 mom had had mobility problems for the last -- past two or
23 three months, or maybe more, you don't know where that came
24 from, correct?

25 A. Um, not without making an assumption, no.

26 Q. Okay. And then Dr. Awan was told: Now she spends
27 all day in the wheelchair.

28 Do you know where she got that information?

1 A. I'm assuming my father or I, but I don't remember
2 that.

3 Q. Do you remember that as of November 4th, 2008, your
4 mom was spending most of her days in a wheelchair?

5 A. I -- um, between my father and I, yeah. We started
6 kind of reconciling our thoughts and notes and -- yeah. It
7 was like, "What's going on?" Why -- we just hadn't seen
8 her up and mobile in quite a while.

9 Q. All right. So then Dr. Awan in this subjective
10 section writes: She, meaning your mom, cannot stand or
11 bear weight on right leg.

12 Do you recall Dr. Awan having your mom try to stand
13 up and making those observations?

14 A. I do.

15 Q. Okay. And then Dr. Awan noted: Right arm and hand
16 also have little movement.

17 Do you recall that your mom had very little movement
18 in her right arm and hand at that visit?

19 A. I do.

20 Q. Okay. Then Dr. Awan in the subjective portion also
21 wrote: She does not swallow all her food and had some in
22 her mouth at this visit.

23 Do you have a memory as of November 4th, 2008, of
24 being aware that your mom was having swallowing issues?

25 A. I'm the one that pointed that out to Dr. Awan. It
26 wasn't so much a swallowing issue, just she still had a
27 little bit of stuff kind of trickling out.

28 Q. Okay. So -- well, she had -- so you pointed out

1 that she had some food in her mouth.

2 Do you remember that?

3 A. Yeah. Just because it was kind of on the side.

4 Q. Where did Dr. Awan get the information that your mom
5 was -- did not -- does not swallow all her food? Do you
6 know?

7 A. Yeah, I don't know about that.

8 Q. Do you remember your dad telling Dr. Awan that?

9 A. I don't remember him saying anything like that.

10 Q. Do you remember being aware in November of 2008 that
11 your mom was having swallowing problems?

12 A. No.

13 Q. And then Dr. Awan noted that your mom's right ankle
14 was more swollen than the left.

15 Do you remember her having swelling of her ankles at
16 that point in time?

17 A. I remember that at some point. Until I would have
18 read it here, I wouldn't have remembered it from that day.

19 Q. And then your -- and your mom was giving limited
20 "yes" and "no" answers when the doctor was asking her
21 questions.

22 Do you remember that?

23 A. I don't remember.

24 Q. Would that be consistent with what -- how you
25 remember your mom in November -- on November 4th of '08,
26 around that time frame, that she was basically responding
27 with yeses and nos?

28 A. Yeah. Yes.

1 Q. Okay. Now, you testified a while ago that this
2 visit -- that you initiated this visit on November 3rd
3 because somebody had told you that your mom had a wound on
4 her foot?

5 A. Um, I think the primary thing was that she was
6 having trouble standing and putting weight on her -- on her
7 right foot.

8 Q. Okay. So when were you told that your mom was
9 having trouble standing and putting weight on her right
10 foot?

11 A. Um, well, I know it was the day before. Are you
12 asking what time?

13 Q. No. It was November 3rd? That was the first time
14 you were told that?

15 A. Yes.

16 Q. And who told you that?

17 A. One of her -- it was a female. It was one of the
18 resident care people. It was not somebody I knew. It
19 wasn't Melissa or Nancy, or...

20 Q. And on November 3rd then, when this caregiver told
21 you that, was that the first time that you were aware that
22 your mom was having trouble standing and putting weight on
23 her foot?

24 A. Is that the first time I was aware of it?

25 Q. Right.

26 A. I knew that she wasn't standing. I knew when I
27 tried that she just kind of refused.

28 Q. Okay. So before November 3rd of 2008, you

1 personally observed that your mom was refusing to stand and
2 was having trouble standing, correct?

3 A. Well, more that every time I came in there was no --
4 there was nothing happening.

5 Q. Okay.

6 A. I didn't see anything going on.

7 Q. Okay. I'm following up on what you just told me in
8 terms of you observing that your mom did not want to stand
9 and was having trouble putting weight on her foot.

10 My question is: When did you first make that
11 observation yourself?

12 A. Whew. I couldn't give you -- there was one occasion
13 that I remember trying to help her out of the wheelchair.

14 Q. Okay.

15 A. And she resisted.

16 Q. And in relation to the November 4th visit, can you
17 tell us whether it was the day before, the week before?

18 Can you give us a time frame for that?

19 A. No.

20 Q. Okay. When did you first notice, if ever, that your
21 mom was having limitation of movement with her right arm
22 and hand?

23 A. I believe on this day.

24 Q. Okay.

25 A. I don't remember that specifically before this.

26 Q. All right. Now, you told us, if I recall, that when
27 you went to go get your mom on November 4th, Nancy Cordova
28 stopped you and told you, as you recall, that she -- that

1 there was a thought your mom had had a stroke, right?

2 A. That is correct.

3 Q. Okay. So that concerned you, true?

4 A. Yeah.

5 Q. Okay. And so when you -- when you got into the
6 appointment with Dr. Awan that day and sat down in the
7 room, do you remember telling Dr. Awan, "Hey, we think she
8 might have had a stroke"?

9 A. I do remember that.

10 Q. And was that part of the conversation that you had
11 with Dr. Awan about the -- whoops -- the limitation of her
12 movement of her arm and hand?

13 A. Did I have a conversation about her limited
14 movement?

15 Q. Right.

16 A. Um, I believe she responded something -- *You know,*
17 *what makes you say that?* And I said, *Well, that's what*
18 *they told me and -- you know, because they were seeing that*
19 *she was having -- yeah -- some limited movement of her arm*
20 *and leg, or...*

21 Q. Okay. Do you remember when you're discussing in
22 that initial part of the visit with Dr. Awan, saying, "Hey,
23 they think maybe she had a stroke"? Do you remember saying
24 that?

25 A. To Dr. Awan?

26 Q. Right.

27 A. Something to that effect, yeah.

28 Q. And in your deposition you told us that Dr. Awan was

1 basically shocked that that would even be suggested, right?

2 A. Not shocked, but -- she definitely challenged me.

3 It was like, *Where did you get -- where did you come up*
4 *with that?*

5 Q. Okay. Was it your understanding that at the end of
6 this meeting with Dr. Awan -- did she communicate to you in
7 some fashion that she didn't think your mom had had a
8 stroke or a small strokes?

9 A. I think she basically said, *You know, there's*
10 *nothing that indicates that that is true.* So kind of
11 almost like she was trying to comfort me.

12 Q. Okay.

13 A. You know, that -- yeah. And kind of the whole thing
14 that I explained earlier about, *If she did, what are*
15 *we going -- you know, what do you want to do?*

16 Q. What did Dr. Awan tell you, if you recall, about why
17 she thought your mom's right arm and hand had little
18 movement at that time? Did she say anything to you?

19 A. I don't remember.

20 Q. Okay. All right. Now, down under the physical exam
21 portion of the visit, doctor -- Dr. Awan again notes the
22 hemiparesis on the right -- the right arm has a flexion
23 contracture at the elbow and she cannot lift her arm fully.
24 And Dr. Awan said: Right leg, she does not move at all.

25 Is that consistent with what you observed that day?

26 A. I remember her trying to work her arm a little bit,
27 and my mom kind of grimacing at the movement there. I
28 remember her trying to have my mom stand on both feet. And

1 she stood with assistance, but almost like a "Karate Kid"
2 thing, where her right foot stayed up. It really didn't
3 touch the ground.

4 Q. So the next section then is where Dr. Awan is
5 describing the extremities and she's talking about the
6 swelling of the feet and the ankle. And then she writes:
7 Has a callous that has ulcerated on bunion right foot.

8 And I want to ask you first of all, do you remember
9 Dr. Awan looking at your mom's foot that day?

10 A. I believe so.

11 Q. And what do you recall Dr. Awan saying about what
12 she saw on your mom's right foot that day?

13 A. You know, this is where -- I'm not sure for some
14 reason if I was not in -- in there. Because I remember her
15 telling me about it, that it -- you know, it was a little
16 scabbed over and it may be healing. And so -- but she
17 wasn't like showing me it at the time. That's why -- I
18 don't have a recollection like she was going, "See right
19 here." She just kind of told me about it. So I'm not sure
20 if I stepped out of the exam room while she was doing other
21 stuff. I'm not sure how that played out there.

22 Q. Do you remember personally looking at this --
23 what -- this sore that Dr. Awan was calling an ulcerated
24 bunion on the right foot?

25 A. I remember seeing it, I think, one time. And I'm
26 not sure that was the day that I saw it.

27 Q. Do you remember seeing it at the doctor's office, or
28 where do you remember seeing it?

1 A. I think it was back at Emerald Hills. My dad had
2 called me about it leaking through the wrapping.

3 Q. Okay.

4 A. And so I went down there and I got somebody. You
5 know, can you take a -- it was one of their resident
6 care -- you know, of course, I asked if Peggy was there,
7 and she was not in the building. And I got somebody, you
8 know, one of their med techs or resident care people to
9 redress the wound. My dad was really upset about it.
10 Because literally it had seeped through and it was a big
11 yellow thing that was coming through.

12 Q. My question was if you remember when you saw it. Do
13 you remember when?

14 A. In relation to this visit?

15 Q. Right.

16 A. I -- I want to say it was after, you know.

17 Q. Okay.

18 A. So -- but I don't remember exactly when.

19 Q. All right. Let's go to the -- if you could turn to
20 page 000284, the next page.

21 A. Okay.

22 MR. REID: And let's bring up the middle portion
23 there (indicating).

24 Q. (By MR. REID) We won't go through all of the
25 diagnoses, but -- so the assessment and plan by Dr. Awan
26 was -- she noted the dementia. And then she also said the
27 hemiparesis on the right.

28 Did she ever explain to you what hemiparesis is?

1 A. I don't think until this process here in trial that
2 I've ever even heard that word, so...

3 Q. Okay. That's fine.

4 Dr. Awan wrote: Patient may have -- have has --
5 probably have had -- a CVA or a series of small strokes
6 that led to this impairment.

7 Is that consistent with your memory, that -- do you
8 remember Dr. Awan telling you that your mom may have had a
9 stroke or a series of small strokes that led to this
10 impairment?

11 A. That was mainly brought on by me, I think.

12 Q. Is it your memory that Dr. Awan said, "I don't think
13 it was a stroke or a series of small strokes"?

14 A. No, she didn't say, "I don't think." It was more,
15 *Why are you saying that? What's your basis?* And then --
16 and then we kind of went into what the next part, the --

17 Q. Okay.

18 A. You know --

19 Q. Let me ask you this then: Did she give you any
20 explanation as to what she thought was causing that
21 hemiparesis, the paralysis on the right side of your
22 mom's --

23 MS. CLEMENT: Objection, your Honor. It misstates
24 what hemiparesis is. It's not paralysis. It lacks
25 foundation.

26 THE COURT: Sustained.

27 Q. (By MR. REID) Did Dr. Awan give any explanation as
28 to why she thought your mom could not move her right leg

1 and had the limited movement of her right arm and hand?

2 A. Again, I can't -- there was some point where
3 somebody said something about maybe she had laid on it and
4 that had caused -- but I don't remember if she said that.
5 I don't remember where I heard that.

6 Q. Okay. So you don't remember Dr. Awan offering any
7 explanation as to why your mom was having this problem with
8 her arm and her leg; is that correct?

9 A. Nah, I don't recall. Yeah.

10 Q. Okay. And then you do remember Dr. Awan discussing
11 with you and your dad that in her opinion a diagnostic work
12 up would not be helpful.

13 Right? You testified about that?

14 A. Correct.

15 Q. Okay. And then Dr. Awan said she was going to have
16 the home health from Kaiser go out to Emerald Hills to do
17 a -- a physical therapy evaluation, right?

18 A. Correct.

19 Q. And she noted at the bottom: Patient is DNR.
20 Do not resuscitate, correct?

21 A. I think so.

22 Q. And that's consistent with what we -- your mom
23 signed -- or your dad signed for your mom back in December
24 of '07?

25 A. Yeah, I'm not sure. Because that's like a no CPR
26 thing. I don't know if those are synonymous or not.

27 Q. Okay. Did Dr. Awan at this visit give you any
28 information or impression about whether your mom's

1 prognosis was good or looking worse?

2 A. No, she -- I would have remembered that. She didn't
3 say one way or the other.

4 Q. Now --

5 MR. REID: Thank you. We can put the lights on.

6 Q. (By MR. REID) So it was -- and then it was two days
7 later on November 6th that the physical therapist came out
8 from Kaiser Home Health.

9 Do you recall that?

10 A. I don't know the date.

11 Q. Do you remember being present when the Kaiser
12 physical therapist came out and followed up on the order
13 with Dr. Awan?

14 A. Vaguely.

15 Q. Do you remember -- oh, by the way, did Dr. Awan --
16 apparently, Dr. Awan didn't ask about the x-ray of the foot
17 at that November 4th meeting, correct?

18 A. Yeah. I don't think so.

19 Q. And there was no x-ray ordered at that time, was
20 there?

21 A. I don't think so. No.

22 Q. And do you remember Dr. Awan saying, "Hey, I ordered
23 an x-ray. How come it didn't happen?"

24 A. I don't remember that.

25 Q. Okay. We -- you testified about the November 17th
26 meeting with Peggy and Nancy and Melissa and -- and your
27 wife.

28 Do you recall that?

1 A. Correct.

2 Q. How long did the meeting last?

3 A. An hour, hour-and-a-half at the most.

4 Q. And how long did it take to get that meeting
5 scheduled?

6 A. A couple weeks.

7 Q. Okay. And were you the one setting up the meeting,
8 or was it your wife that was setting up the meeting?

9 A. Kathleen did.

10 Q. Okay. And then following the meeting, do you recall
11 that there were a series of e-mails back and forth between
12 you and Kathleen with Peggy and Nancy?

13 A. Yeah. Not Peggy.

14 Q. Okay. Well, let's --

15 A. We CC'd her, but we didn't hear anything from her.

16 Q. All right. Would you mind pulling Exhibit 5015,
17 please.

18 A. 5-0-1-5?

19 Q. 5-0-1-5. Yes.

20 A. I think I've got it.

21 (Joint Exhibit Number 5015 was marked for
22 identification.)

23 Q. (By MR. REID) Okay. Sorry to get you all mixed up
24 there?

25 A. Are we going to need this?

26 Q. I don't think so.

27 A. I'll just leave it here.

28 Q. If you wouldn't mind just turning to page 28 of that

1 exhibit, and then work forward to page 21.

2 A. Okay.

3 Q. And if could you tell me whether you recognize that
4 as a series of e-mails with Emerald Hills following the --
5 the November 17th meeting.

6 A. I'm sorry. What do you want me to confirm here?

7 Q. Can you just confirm that those eight pages are a
8 series of e-mails between you and your wife with
9 Emerald Hills in the days and weeks following the November
10 17th, 2008 meeting?

11 A. Yes. I mean, I wasn't CC'd on all of -- from Nancy.
12 I think there was one or two I saw that she didn't CC me
13 on. But, yeah, these are the ones we've looked at.

14 Q. Okay. And you've reviewed these to refresh your
15 memory about the communications that you had with
16 Emerald Hills after the November 17th, 2008 meeting?

17 MS. CLEMENT: It lacks foundation.

18 THE WITNESS: I'm sorry. I was reading something.
19 What did you say?

20 Q. (By MR. REID) That's okay.

21 From page -- Exhibit 5015, page 21 through page 28,
22 you've reviewed those e-mails to recall the events and the
23 communications that took place between you and Kathleen and
24 Emerald Hills, right?

25 A. Yes.

26 MR. REID: Okay. Your Honor, I'd offer
27 Exhibit 5015, pages 21 through 28 into evidence.

28 MS. CLEMENT: My objection would be only if we move

1 them all in. Otherwise, it's incomplete.

2 MR. REID: We can move them all in. I'm fine with
3 that. Exhibit 5015.

4 THE COURT: All right. 5015 is admitted.

5 **(Joint Exhibit Number 5015 was received into**
6 **evidence.)**

7 MR. REID: Okay. Thank you, your Honor.

8 Q. (By MR. REID) So if we could put up -- we'll just
9 start at the back. Exhibit 5015, page 28. So we'll start
10 at the very back because they seem to flow forward.

11 A. Okay.

12 Q. And actually, the last page is just a signature --
13 your wife's signature block, right?

14 A. Correct.

15 Q. And what was her -- what did she do? What was your
16 wife's employment at this time, in November of 2008?

17 A. I'm glad it's there because I wouldn't have been
18 able to tell you. Interim Deputy Compliance Officer.

19 Q. Okay. Office of the General Counsel with
20 Sutter Health, right?

21 A. Correct.

22 Q. Okay. Do you know what she did in that job?

23 A. Compliance.

24 Q. Okay. All right. Let's go to page seven. Page 27.

25 All right. I think this is an e-mail that we've
26 seen in the Emerald Hills chart. Probably you've been here
27 when we put it up, but it's actually the whole left margin.
28 You're copied on this e-mail from your wife Kathleen. And

1 it was sent to Nancy and Peggy.

2 Right?

3 A. Correct.

4 Q. Okay. And this was confirming the meeting of
5 Monday, the 17th. And Kathleen expressing appreciation
6 that the meeting took place.

7 Right?

8 A. Correct. Yes.

9 Q. Okay. Let's go to page 26. 5026 -- 5015, 26. I
10 apologize.

11 And then we've seen this one also. But now we have
12 the full version.

13 By the way, do you know that these were -- these
14 were produced -- these were given to us by Kathleen in her
15 deposition. You know that, right?

16 A. Correct.

17 Q. Okay. And we've seen this one, too. This is --
18 this is Nancy responding to you and your wife about -- also
19 appreciating the meeting, correct?

20 A. Yes.

21 Q. Okay. Now, if we could go to page 25 of this
22 exhibit, starting in the middle and working our way down.

23 That's an e-mail from you on Sunday, November 30th,
24 at 5:00 p.m. And that was to Nancy Cordova. You copied
25 your wife Kathleen and also to Peggy Stevenson, the RCD.

26 Correct?

27 A. Yeah, it wasn't from me.

28 Q. Oh, okay. It's just from your e-mail address?

1 A. Correct.

2 Q. I see. But you've seen this -- oh, yeah. It's from
3 your -- it's from Kathleen down at the bottom.

4 A. Correct.

5 Q. Okay. And in this e-mail, Kathleen then is
6 communicating with Nancy and Peggy. She says: I'm afraid
7 to ask, but have you heard anything? I heard nothing from
8 the social workers this week.

9 And did you understand that Kathleen was hoping to
10 hear something from the social worker at Kaiser in the
11 interim time frame here?

12 MS. CLEMENT: Objection; lacks foundation.

13 THE COURT: It's his wife. He can answer, if he
14 knows.

15 THE WITNESS: I'm sorry. What's your question?

16 Q. (By MR. REID) The question is: On November -- as
17 of November 30th, Kathleen is indicating she hadn't heard
18 from the social workers the prior week. And I'm asking
19 you, do you have a recollection of Kathleen expressing
20 concern or frustration that the Kaiser social worker hadn't
21 gotten back to her?

22 A. The Kaiser social worker? I'm not sure.

23 Q. Okay.

24 A. I don't know what this was.

25 Q. All right. Then Kathleen indicated: I am hoping
26 the pressure ulcer is all better and we don't need to move
27 mom.

28 Did you have an understanding in November -- on

1 November 30th of 2008, what Kathleen was communicating at
2 that time?

3 A. On that issue?

4 Q. Right.

5 A. Yeah, we were aware of one pressure ulcer on the
6 foot. And we were trying to follow up to make sure that
7 that was healing. That was something that they had said to
8 us, that that could be a barrier to mom staying at
9 The Palms. And that's why they kind of invoked the
10 hospice -- pursuing the hospice thing for us.

11 Q. Okay. So Kathleen is hoping the ulcer is better and
12 hoping that you wouldn't need to move mom, meaning move her
13 to a skilled nursing facility, right?

14 THE COURT: Can I just -- he said "Palms."

15 MR. REID: Yes.

16 THE WITNESS: Oh.

17 Q. (By MR. REID) Maybe we should clarify. I think you
18 misspoke, but...

19 A. Okay.

20 Q. So this all had to do with your -- when your mom was
21 living at Emerald Hills?

22 A. Emerald Hills. I'm sorry. Yes. Yeah.

23 Q. Okay. And as of November 30th, the desire that, if
24 possible, you didn't want to move your mom from
25 Emerald Hills to a skilled nursing facility, right?

26 A. This was probably the last day like that, yes.

27 Q. Okay. But you were aware then, as of November 30th,
28 2008, that there might be a requirement or a need for your

1 mom to go to a skilled nursing facility, right?

2 A. Yes.

3 Q. All right. Now, let's go to page 24. 5015, page
4 24. And this is an e-mail from Peggy Stevenson, the
5 resident care director at Emerald Hills, on Monday,
6 December 1st, 2008, at 12:25 p.m.

7 Right?

8 A. Correct.

9 Q. Do you see that?

10 A. Yes.

11 Q. And it's addressed to Eric Boice, Nancy Cordova, and
12 Kathleen Boice, at two different e-mail addresses, right?

13 A. Correct.

14 Q. Okay. And I think you made reference to this e-mail
15 when you were testifying before, but I want to follow up on
16 it.

17 So Peggy Stevenson at that date and time wrote to
18 your wife and said: I just met with the nurse from Kaiser
19 Home Health. I did receive a care alert for Joan from over
20 the long weekend regarding other areas that are
21 problematic.

22 Do you remember learning, as of December 1st, 2008,
23 that Peggy Stevenson was communicating to your wife that
24 there had been a care alert at Emerald Hills and that there
25 were more pressure areas identified on your mom's body?

26 MS. CLEMENT: It misstates the document.

27 THE WITNESS: Yeah, the first sentence --

28 THE COURT: He can answer.

1 THE WITNESS: I'm sorry.

2 Q. (By MR. REID) Go ahead. You can answer the
3 question.

4 A. The first sentence -- I'm trying to read on
5 because...

6 Q. That's fine. I'll tell you, why don't you take a
7 minute to read the whole thing. And then I'll ask you a
8 couple questions. Okay?

9 (Pause.)

10 THE WITNESS: Okay. Go ahead.

11 Q. (By MR. REID) Okay. So my question is: As of
12 December 1st, 2008, just after noon, I want to know if you
13 were aware that Peggy Stevenson was communicating to your
14 wife that a care alert had been issued and had identified
15 more wounds on your mom?

16 A. It didn't really identify more wounds, just -- it
17 kind of said that, yeah, they have other areas that are
18 problematic.

19 Q. Okay. My question is: Do you remember being aware,
20 as of December 1st, 2008, that there -- whatever -- that
21 there were other problematic areas on your mom's skin,
22 learning that from Emerald Hills?

23 A. This was the first. This was like the floodgate
24 opening for us.

25 Q. Okay. So does that mean you do remember being aware
26 on December 1st, 2008, of this information from this
27 e-mail?

28 A. Yes.

1 Q. Okay. So on December 1st, Miss Stevenson indicated
2 that the home health nurse will call Misty.

3 Do you know who Misty is?

4 A. I could guess, but...

5 Q. Yeah.

6 A. No.

7 Q. I don't want you to guess.

8 Do you recognize Misty as being someone affiliated
9 with Kaiser Home Health?

10 A. I believe so.

11 Q. And Miss Stevenson then goes on and says: And I am
12 sure she will be contacting you regarding moving Joan to a
13 skilled nursing facility.

14 She continued: Joan's right foot wound is still
15 coming along, but not as quickly as we would like.

16 Was that your understanding; that as the nurses --
17 the home health nurses were providing treatment to the --
18 what we refer to as "the bunion wound," that it was
19 improving a little bit?

20 (Pause.)

21 THE WITNESS: I don't know. We never got any word
22 on it.

23 Q. (By MR. REID) Okay. And then Miss Stevenson also
24 indicated that your mom had a fluid-filled area on her
25 right inner arm at the elbow and a scar-covered area on the
26 left heel that is healing. But she indicated: If the scar
27 came off, that would require wound care.

28 Do you remember being aware of that as of

1 December 1st, 2008, that information?

2 A. I don't specifically remember that, Mr. Reid.

3 Q. And then Miss Stevenson also indicated that your mom
4 was -- had a reddened area on her hip, which Miss Stevenson
5 hadn't personally looked at.

6 Were you aware of a reddened area on your mom's
7 right hip as of December 1st, 2008?

8 A. Based on this?

9 Q. Were -- based on any information. I'm trying to
10 understand what you knew and thought on December 1st, 2008.

11 A. This was the first we heard.

12 Q. Okay. And do you remember getting this information
13 on December 1st, 2008?

14 A. I remember Kathleen called me. She read this first
15 and called me.

16 Q. Okay. And then Miss Stevenson said: So all in all,
17 I think Misty will be advising skilled care for Joan, and I
18 can't say I disagree with that.

19 I think you testified to that earlier today.

20 And then Miss Stevenson indicated that she had
21 spoken with her supervising regional nurse, and that nurse
22 feels that is Joan needs a higher level of care as well.

23 Do you recall being aware that -- that
24 Miss Stevenson, and now her supervisors, were thinking that
25 your mom needed to move to skilled nursing, as of
26 December 1st?

27 A. Just based on this.

28 Q. Okay. And then Miss Stevenson said she had a call

1 out to Misty to confirm what will take place. And she said
2 she would communicate anything she heard back to you and
3 your wife.

4 True?

5 A. What you just read?

6 Q. Yeah. Do you recall having that information?

7 A. Just in here, yes.

8 Q. Okay.

9 THE COURT: Mr. Reid?

10 Q. (By MR. REID) Now, on page 23 of that exhibit --

11 THE COURT: Mr. Reid?

12 MR. REID: Yes.

13 THE COURT: Are we almost done with this exhibit,
14 because it's just about the 4:30 hour, or would you like to
15 pick up tomorrow here?

16 MR. REID: We could pick it up tomorrow, your Honor.
17 That's fine. Just a couple more.

18 THE COURT: Okay. Ladies and gentlemen, leave your
19 notebooks on the chairs. Remember the admonitions. I'll
20 see you tomorrow morning at 9:00 a.m.

21 **(The following proceedings were then had in open**
22 **court, outside the presence of the jury.)**

23 THE COURT: All right. Do we need to talk about
24 anything?

25 MS. CLEMENT: I don't think so.

26 Just an estimate of time, Mr. Reid?

27 MR. REID: I'd say a half-hour.

28 MS. CLEMENT: A half-hour. Okay.

1 THE COURT: So then for tomorrow, in addition to our
2 current witness, who will we be talking with?

3 MS. CLEMENT: We're going to run video of -- that
4 has already been approved. And Susan Rotella, we're going
5 to put her on in the morning, because she has a flight
6 leaving in the afternoon. And Nancy, Mark and Kathleen
7 Boice.

8 THE COURT: Okay. All right. I'll see you all
9 tomorrow morning.

10 MS. CLEMENT: Thank you, Judge.

11 MR. REID: Thank you.

12 (Evening recess.)

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1 TUESDAY, FEBRUARY 5, 2013

2 MORNING SESSION

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4 The matter of JOAN BOICE, by and through her
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,
8 Defendant, Case Number 34-2009-00063714, came on regularly
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the
10 Superior Court of California, for the County of Sacramento,
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
14 BOICE and MARK BOICE, were represented by LESLEY A.
15 CLEMENT, Attorney at Law; VALERIE DAWSON, Attorney at Law
16 (not present); ASHLEY BAIRD, Attorney at Law; and SEAN
17 LAIRD, Attorney at Law.

18 The Plaintiffs, ERIC BOICE, NANCEE BOICE and MARK
19 BOICE were present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS AT
21 EMERALD HILLS, was represented by BRYAN R. REID, Attorney
22 at Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,
23 Attorney at Law.

24 Also present on behalf of the Defendant, EMERITUS
25 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.
26 McKINNON, Vice President of Legal Affairs; LISA HULSE, Vice
27 President Quality & Risk Management; and HOLLY A. FORD,
28 Trial Consultant.

1 **(The following proceedings were then had in open**
2 **court, in the presence of the jury.)**

3 THE COURT ATTENDANT: All rise. Come to order.
4 Department 45 is in session. The Honorable Judge Judy
5 Hersher presiding.

6 You may be seated.

7 THE COURT: All right. Good morning.

8 MR. REID: Good morning.

9 JURORS IN UNISON: Good morning.

10 MR. REID: Good morning, ladies and gentlemen.

11 JURORS IN UNISON: Good morning.

12 TESTIMONY OF

13 ERIC BOICE, a witness called by the Plaintiffs:

14 CROSS-EXAMINATION (resumed)

15 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
16 Defendant:

17 Q. Good morning, Mr. Boice.

18 A. Good morning.

19 Q. I wanted to follow up where we left off yesterday.
20 We were looking at the series of e-mails that occurred
21 after your -- after December 1st.

22 MR. REID: If we could maybe pull up Exhibit 5015.

23 (Pause.)

24 MR. REID: Thank you, Mr. Taylor.

25 THE COURT ATTENDANT: Yes.

26 THE WITNESS: Which page?

27 Q. (By MR. REID) Let's go back to page 5015, dash, 24.

28 A. Okay.

1 MR. REID: May we display that page, your Honor?

2 THE COURT: Yes.

3 Q. (By MR. REID) Okay. And just to kind of remember
4 where we were, this was the e-mail we discussed dated
5 December 1st, 2008, that Peggy Stevenson sent to your wife
6 and you about a care alert she'd received and some
7 additional issues with your mom's skin.

8 Do you recall that?

9 A. I think it was just a single care alert, not plural.

10 Q. Right. Isn't that what I said? A care alert?

11 A. You said, *Care alerts*.

12 Q. Okay. I apologize. I meant to say a care alert she
13 received.

14 A. Okay. Yes.

15 Q. Okay. And so we went through that. And I think
16 we -- you agreed that as of 12:30, on December 1st, 2008,
17 or that afternoon, you were aware that your mother was
18 having more skin issues, correct?

19 A. I'm not sure if it was that afternoon or that
20 evening. I'm not sure. I remember Kathleen calling me.

21 Q. Okay.

22 A. She had received the e-mail first, and...

23 Q. All right. If you could then turn forward to page
24 23, because we're working from the back to the front --

25 A. Got it.

26 Q. -- chronologically.

27 This is an e-mail then that your wife Kathleen sent
28 in the evening of December 1st, back to Peggy and Nancy, in

1 response to Peggy's e-mail.

2 You're copied on the e-mail. Do you see that?

3 A. I do.

4 Q. Okay. And now in this e-mail back, your wife is
5 letting Peggy and Nancy know -- it says: Just to let you
6 know, Myron heard from one of the caregivers today that
7 Joan did not get out of bed the whole day, that she is not
8 eating or drinking, and that the nurse came to visit her
9 for over 20 minutes.

10 Now, the first question I have is: Before
11 December 1st, was there ever a time that you were made
12 aware that -- or observed that your mom had not gotten out
13 of bed the entire day?

14 A. That I observed?

15 MS. CLEMENT: It lacks foundation.

16 THE COURT: I'm sorry. I couldn't --

17 MS. CLEMENT: It lacks foundation, the way phrased.

18 MR. REID: I think it was compound, so I'll ask the
19 question differently. I'll withdraw the question.

20 THE COURT: All right.

21 Q. (By MR. REID) Prior to December 1st, 2008, had you
22 ever been informed that -- of a time -- let me start over.
23 I'm not -- it's not working quite well this morning.

24 Was there a time before December 1st, 2008 that you
25 became aware that your mom had not gotten out of bed all
26 day?

27 A. I had a few suspicions, but I don't think I ever
28 was -- it was verbalized to me.

1 Q. Okay. So in terms of documentation, this would be
2 the first documentation that you're aware of reflecting
3 your mom not getting out of bed all day; is that correct?

4 A. The first documentation?

5 Q. Yeah.

6 A. Yes.

7 Q. Okay. Now -- then your -- it said that the nurse
8 came to visit for over 20 minutes on December 1st.

9 Did you understand that to be the Kaiser Home Health
10 nurse?

11 A. Again, just by matter of elimination. Because I
12 don't think Peggy ever spent any time with my mother.

13 Q. Okay. And then your mom -- or, I'm sorry, your wife
14 says: Is it true that she is refusing to eat and drink?

15 Was there ever a time before this e-mail that you
16 were informed by anyone that your -- your mom was
17 completely refusing to eat and drink?

18 MS. CLEMENT: Objection. It lacks foundation that
19 that occurred.

20 THE COURT: He can answer, if he can.

21 THE WITNESS: So the question is, Was there ever a
22 time -- I'm sorry. Can you --

23 Q. (By MR. REID) Yeah. I'll ask it again.

24 Was there a time before December 1st, 2008 that you
25 were informed that your mom had completely refused to eat
26 or drink?

27 A. Not that I recall right now.

28 Q. Okay. Then Kathleen goes on to question: How long

1 has this been happening? And then she makes a reference:
2 The last we discussed this she was drinking in a limited
3 way, but her diet was being upgraded and you would keep us
4 informed if things changed.

5 Was that part of the November 17th meeting, that you
6 had had a discussion about her diet?

7 A. We talked about food issues.

8 Q. Okay.

9 A. Yeah.

10 Q. All right. Now, the next paragraph, it continues
11 with Kathleen indicating: Either way, if any of this is
12 true, we really would have appreciated it if we had been
13 informed that she was not eating, drinking, or in bed all
14 day, rather than dad.

15 Was there a directive or a communication given to
16 Emerald Hills that your dad -- that the communication
17 should be with you and Kathleen, rather than your dad?

18 A. We had indicated to them that we would rather it
19 come to us first. And, therefore, we could, with a little
20 more compassion, explain stuff to my dad and why things are
21 happening. Yeah, he got really upset at several junctures,
22 and this was an issue on several occasions.

23 Q. Okay. All right. And then Kathleen says: I was
24 trying not to discuss with him her condition until we knew
25 what SNF she is moving to.

26 "SNF," skilled nursing facility?

27 A. Correct.

28 Q. And so as of December 1st, was it your understanding

1 that your mom was, in fact, going to move to a skilled
2 nursing facility?

3 A. I believe so.

4 Q. She says: However, with the news he brought me --
5 and is he even accurate? -- I had to tell him what was
6 going on without having the answers. Perhaps it would help
7 to provide the caregivers a training where I go in and act
8 like dad when he hears these comments and then they have
9 to -- the responsibility of talking me down off the
10 ceiling, like I have to do with him.

11 She says: Just kidding. But it does make it tough
12 and it takes quite a bit of time.

13 This was a tough -- a very difficult time in your
14 family's life, wasn't it?

15 A. Yes.

16 Q. And a lot of emotion and a lot of concern amongst
17 your family at that time, right?

18 A. Yes. And Kathy showed a lot more composure. That's
19 why we let her do this.

20 Q. Okay. Then Kathy said: I also heard from Misty
21 today, and she is actively pursuing the skilled nursing
22 facility placement. I think this whole idea of getting her
23 moved fell through the cracks at Kaiser because of the
24 holiday.

25 Do you have a recollection of -- of things getting
26 off track over the Thanksgiving holiday, of getting your
27 mom moved to Kaiser -- I mean, sorry, to a skilled nursing
28 facility?

1 A. Yeah, things seemed to get delayed. And we're not
2 sure what happened.

3 Q. So was it actually before December 1st that you were
4 aware that active steps were being taken to move your mom
5 to a skilled nursing facility?

6 A. Um, I'm trying to remember the time line. Yeah.
7 There were some wheels turning. We were starting to go
8 down that road.

9 Q. Okay. And then just to kind of finish up, we'll go
10 to page 22 of that exhibit.

11 A. Okay.

12 Q. And down at the bottom, then there's just a quick
13 response from Nancy Cordova:

14 Hi Kathleen. I will check with everybody and get
15 back to you. Thanks for the information.

16 And that was the next day, December 2nd, right?

17 A. Yes.

18 Q. And then in response to that your wife wrote back
19 and said: Thanks, Nancy. Also, who should we talk to
20 about how the finances work with Emerald Hills while mom is
21 in the skilled nursing facility?

22 You see that?

23 A. Yes.

24 Q. All right. And that was on December 2nd.

25 Now, in the evening of December 2nd -- if you'd turn
26 to page 21.

27 And so at 6:00 p.m. on Tuesday, December 2nd, Nancy
28 Cordova wrote back to you and your wife, and copied Peggy,

1 and indicated she's going to have a staff meeting on
2 Friday, and they're going to talk about how to communicate
3 with Myron per your and your wife's request.

4 Right?

5 A. I'm sorry?

6 Q. Nancy indicated to you that she was going to have a
7 full staff meeting on Friday and was going to talk to them
8 about your requests about how your father should be
9 communicated with and what he should be told, right?

10 A. Yes.

11 Q. Okay. And she said: We are waiting on Misty for
12 plans for the skilled nursing facility placement.

13 And so that was still in the works, right?

14 A. Yes.

15 Q. Then Nancy said: Nothing changes while she, your
16 mom, is temporarily placed at a skilled -- at skilled
17 nursing with regards to Joan's financial obligations as the
18 apartment remains hers; though, I will investigate a
19 possible food credit.

20 And then she said: Should she be unable to return
21 due to our licensing limitations, there would not be a
22 required 30-day notice. If she is able to return,
23 according to our regulations and internal assessment, and
24 you choose to place her at a skilled nursing facility,
25 there would be a 30-day notice.

26 And then she says: Does it make sense? It's been a
27 long day.

28 So she's trying to communicate back with you of what

1 the financial obligations would be if your mom moved --
2 when your mom moved to the skilled nursing facility?

3 MS. CLEMENT: Objection; lacks foundation. Calls
4 for speculation as to Nancy Cordova's state of mind.

5 THE COURT: Sustained.

6 Q. (By MR. REID) Okay. Did you understand when you
7 saw this e-mail in early December that Miss Cordova was
8 trying to communicate to you the financial obligations that
9 attached to your mom's moved to a skilled nursing facility?

10 MS. CLEMENT: Same objections.

11 THE COURT: He can answer.

12 THE WITNESS: Mr. Reid, I vaguely remember this
13 e-mail. At this point, things were moving very, very
14 quickly. I didn't pay much attention to that.

15 Q. (By MR. REID) Okay. Was there -- at this time,
16 December 2nd, was there a thought that -- let me ask it
17 this way: Were you contemplating in early December the
18 possibility of having your mom moved to a skilled nursing
19 facility to -- to get nursing care for her skin issues, and
20 then possibly move back to Emerald Hills if those resolved?

21 MS. CLEMENT: It's vague as to time.

22 THE COURT: Let's get a time frame.

23 Q. (By MR. REID) Okay. Did you have a thought -- were
24 you thinking in early December of 2008 that one possibility
25 might be to have your mom move to a nursing home, to have
26 her wounds addressed, and then possibly move back to
27 Emerald Hills, if that -- if those resolved?

28 MS. CLEMENT: It's still vague as to time, your

1 Honor.

2 THE COURT: He can answer.

3 THE WITNESS: We did think that the skilled nursing
4 facility would be a temporary place where my mom could
5 recuperate and heal. But there was no way she was going to
6 go back to Emerald Hills.

7 Q. (By MR. REID) Okay. Now, between --

8 MR. REID: Thank you. That's the last e-mail in
9 those exchanges.

10 Q. (By MR. REID) Between December 1st and
11 December 4th, did you call Dr. Awan's office?

12 A. I don't recall.

13 Q. Did you take -- make an appointment to take your mom
14 to see Dr. Awan?

15 A. Between December 1st and December 4th?

16 Q. Right.

17 A. Um, not that I recall.

18 Q. Did you call any of the Kaiser nurses to get
19 information from them about your mom's condition or status?

20 A. I don't know.

21 Q. Do you know whether anyone in your family made
22 contact with Dr. Awan about -- about your mom's condition
23 between December 1st and December 4th?

24 A. Just with Dr. Awan?

25 Q. With Dr. Awan, right.

26 A. I don't know.

27 Q. Do you know if anybody in your family had any
28 contact with the Kaiser nurses during that time frame about

1 your mom?

2 A. I don't know.

3 Q. I do want to go to a different topic here. If you
4 wouldn't mind pulling up Exhibit 3.

5 A. Are we done with this?

6 Q. Yes, we are. Thank you.

7 (Pause.)

8 THE WITNESS: Okay.

9 Q. (By MR. REID) All right. If you would kindly just
10 take a look at Exhibit 3, pages -- they're marked BF02
11 through BF25.

12 Could you flip through that quickly and let us know
13 if that is the resident agreement that you executed for
14 your -- you signed for your mom for her admission to
15 Emerald Hills.

16 (Pause.)

17 MS. CLEMENT: Did you say page 35?

18 MR. REID: BF25. And then there will be some
19 attachments to that.

20 (Pause.)

21 THE WITNESS: Through 25, you said?

22 Q. (By MR. REID) Through 25 is -- yes.

23 A. Okay.

24 Q. Does that appear to be the -- the resident agreement
25 that you signed on -- for your mom to move into
26 Emerald Hills?

27 MS. CLEMENT: I'll object to the question. It lacks
28 foundation. It also is incomplete. The agreement goes to

1 page 35, your Honor.

2 THE COURT: Mr. Reid, do you agree that the entire
3 agreement is greater than the number of pages you've
4 indicated?

5 MR. REID: Then there are appendixes to it. And I
6 was going to introduce those as well, one at a time.

7 Q. (By MR. REID) But if you want -- so through page
8 35, Mr. Boice, do you recognize that as the entirety of the
9 resident agreement that you executed and signed for your
10 mom to move into Emerald Hills?

11 A. Through 35 now?

12 Q. Right.

13 A. And you said the entire agreement?

14 Q. Is that the agreement that --

15 A. I know I signed more than this, but --

16 Q. Well, that's -- okay. There's another set of
17 documents that we'll talk about.

18 A. Oh, okay. Okay.

19 Q. But in terms of the resident agreement that you
20 signed on October --

21 A. Oh. August 29th?

22 Q. Right.

23 A. Okay.

24 Q. That's the first agreement that you signed, right,
25 or the first set of documents you signed?

26 A. I believe so, yes.

27 MR. REID: Okay. And if we could just put up -- I
28 believe this has been admitted, your Honor.

1 THE COURT: It has.

2 MR. REID: So if we could put up page BF25.

3 Q. (By MR. REID) And so this is the signature page on
4 the agreement. And then there's appendixes or attachments
5 after that.

6 Do you recognize your signature there as the
7 representative with power of attorney, dated August 29th,
8 2008?

9 MS. CLEMENT: I'll object. It's compound.

10 THE COURT: Overruled.

11 THE WITNESS: That is my signature. I did not --
12 and I remember telling you in deposition, that is not my
13 check. I don't make checks like that.

14 Q. (By MR. REID) Those are your -- you wrote P,
15 period, O, period, A, after your name?

16 A. I did write that.

17 Q. And then down at the bottom, do you recall --
18 actually, I think you testified that you and Nancy Cordova
19 met on August 29th, 2008, and she went through the
20 agreement with you.

21 A. Correct.

22 Q. Okay. I wanted to ask you just a couple things
23 about the agreement. If you could look at page BF7.

24 And focusing on paragraph seven there,
25 "Transportation."

26 A. Okay.

27 Q. One of the -- one of the services that was available
28 under this agreement was that the staff at the community

1 could arrange for personal transportation for residents,
2 including transportation to local medical and dental
3 facilities for an extra fee, as listed in the appendix.

4 Do you recall that that was a service that could be
5 available if you wanted that for your mom?

6 A. Yes.

7 Q. We'll look at Appendix B in a minute.

8 Now, turning to BF09.

9 A. Okay.

10 Q. Paragraph D.

11 A. E?

12 Q. D.

13 A. D. Okay.

14 Q. The agreement also indicated that Emerald Hills
15 would not be responsible for furnishing or paying for
16 healthcare items and services. And then there's a whole
17 list of things that they wouldn't be responsible for
18 providing.

19 Do you recall that?

20 A. Yes.

21 Q. Okay. And then paragraph E of the agreement.

22 Paragraph E regarding "Outside Providers."

23 You were aware that you certainly had the right and
24 the ability to hire outside providers to come in and work
25 independently with your mom, right?

26 A. You know, are you asking me if I knew all this then?

27 Q. Right.

28 A. Um, I'll be honest, I did not read through this word

1 for word.

2 Q. Okay.

3 A. I trusted what Nancy was telling me and...

4 Q. Okay. Were you -- well, this talks about home
5 health agencies.

6 Were you aware back in -- when your mom was at
7 Emerald Hills that you could arrange to have home health
8 come in and take care of your mom?

9 MS. CLEMENT: Misstates the document, your Honor.

10 THE COURT: He can answer.

11 THE WITNESS: I don't think I was explicitly aware
12 of that, but I don't think I thought there was any
13 hindrance to it or anything.

14 Q. (By MR. REID) Down here near the bottom, the
15 agreement that you signed said: You shall be solely
16 responsible for the cost of the services of your private
17 duty personnel, which they will bill to you directly.

18 And then it continues: You also understand and
19 agree that we, Emerald Hills, shall not be liable for any
20 loss or injury to you, or any other resident of the
21 community, caused by such personnel.

22 That was part of the agreement that you signed,
23 right?

24 A. Yeah. Nancy and I did talk about -- like --

25 Q. Was that part of the agreement, sir?

26 A. Yes. I'm trying to tell you the whole truth here.

27 Q. Okay.

28 A. Would you like me to do that?

1 Q. I'd love you to tell the truth, sir. Yes.

2 A. Well, I swore to tell the whole truth, and that's
3 what I'm trying to do.

4 Q. Okay. What would you like to add to your answer?

5 A. Nancy and I did talk about like the Visiting Angels.
6 That was the company that I was familiar with. And she
7 said, *Yeah, some of our residents do bring in extra help.*
8 *You know, if you think that's needed, we do that.*

9 Q. Okay.

10 A. So...

11 Q. All right. So then you were aware when your mom
12 moved in that you had the right and the ability to hire
13 outside providers to come in and help your mom, right?

14 A. If needed, yes.

15 Q. Okay. Now, let's -- if you would look at page BF12.

16 A. Okay.

17 Q. And I want to direct your attention down to the last
18 section there of transfers from your apartment and that
19 information.

20 Your mom and dad had been living at a residential
21 care facility for the elderly for more than a year before
22 you signed this agreement, right?

23 A. You mean at The Palms?

24 Q. Right.

25 A. Correct.

26 Q. Okay. And did you have an understanding that
27 Emerald Hills had the same licensing -- it was licensed the
28 same way as The Palms, or did you have any understanding?

1 A. Yeah. No, that's what they told me; that they were
2 the same as The Palms.

3 Q. So the contract -- the agreement says that --
4 advises the community is licensed as a residential care
5 facility for the elderly and is not designed to provide
6 higher levels of care, such as nursing, or care for mental
7 or emotional disorders.

8 Was that -- did you have that understanding when
9 your mom moved into Emerald Hills?

10 A. That seems like counterintuitive to moving my mother
11 into a Memory Care Unit and they're not going to provide
12 for mental or emotional disorders.

13 Q. Okay. So was it your understanding that
14 Emerald Hills was going to be providing medical care to
15 your mom when she moved in?

16 A. Not extensive medical care, but that was certainly
17 something that was given to us as they would have a
18 full-time nurse. And I knew my mother, you know, the
19 progression of her disease. I would feel very comfortable
20 with somebody who had extensive medical training. That was
21 a criteria that we were looking for. And, you know, she
22 was on board there and would be able to help and assist if
23 little things came up.

24 You know, we knew that mom had fallen, you know,
25 stuff like that. They had somebody that was highly trained
26 on -- and that's the way that we were told; that that
27 person is available to do those things.

28 Q. Okay. Now, let's look at some of the attachments

1 then, the appendixes to the contract. Kind of skipping
2 ahead.

3 Let's go to Appendix B. We saw that reference.
4 That's BF28.

5 A. Okay. All right.

6 Q. So this was -- this -- this attachment set forth
7 additional services that you could opt to pay for for your
8 mom's care, right?

9 (Pause.)

10 THE WITNESS: I'm sorry?

11 Q. (By MR. REID) Let me ask it differently.

12 The first section talks about the level of care
13 charges that -- based on the assessment, what would be
14 charged monthly for the services that were going to be
15 provided for your mom.

16 MS. CLEMENT: It lacks foundation what this witness
17 understands what Emeritus meant by this document.

18 THE COURT: Let's get some foundation, please.

19 Q. (By MR. REID) All right. Let's -- I'll tell you
20 what, let's just go to the second section, "Additional
21 Services and Charges." And actually if you could go to
22 BF29, the second page.

23 A. Okay.

24 Q. The top entry there is: Special transportation,
25 \$25.00 per hour.

26 Did you ever make arrangements with Emerald Hills to
27 have your mom specially transported anywhere for a fee of
28 \$25.00 per hour?

1 A. We did not. But after that fall, when my mom was
2 transported to the hospital all by herself, I said, *If that*
3 *ever happens again, she needs to have someone with her*
4 *until the family is notified, until we can get there.*

5 Q. Okay.

6 A. And they -- *Oh, yeah. No problem. That won't ever*
7 *happen again.*

8 Q. All right. So the answer is, no, you never arranged
9 or asked Emerald Hills to transport your mom, a special
10 transportation for a fee, right?

11 A. Correct.

12 MS. CLEMENT: Argumentative.

13 THE COURT: Overruled.

14 Q. (By MR. REID) Now, down lower, this bullet point,
15 one-on-one care, in-room care or escort to doctor for
16 \$15.00 an hour, did you ever arrange to have Emerald Hills
17 provide one-on-one care for \$15.00 an hour for any -- any
18 reason?

19 A. We did not. We were available for my mom. But it
20 was nice -- that was a big thing for me, to know that that
21 was there.

22 Q. Okay. Okay. If you could turn to BF33, which is
23 Appendix E.

24 Is that your signature down at the bottom of the
25 page? Near the bottom?

26 A. Yes.

27 Q. Okay. And this is a document that sets forth the
28 rights that your mom would have as a resident in an

1 assisted living, RCFE, correct?

2 A. It says, "Residents' Rights." Yeah. I haven't read
3 all --

4 Q. And then under your signature, the document advised
5 that the resident and/or the responsible person or
6 conservator has the right to be informed of the appropriate
7 licensing agency to contact regarding complaints, which
8 is -- and then there's a name and a phone number for
9 someone you can call if you have complaints, right?

10 A. Okay.

11 Q. Okay. And there's hotline numbers, 24-hour numbers,
12 and a contact number for the local ombudsman that you would
13 be able to contact if you had complaints or concerns, true?

14 A. Yeah. This is the first I even recollect seeing
15 that, so...

16 Q. Okay.

17 A. But it's there.

18 Q. It's there right below your signature, right?

19 A. Yes, sir.

20 Q. Okay. Now, if you could go to BF37, please.

21 And this is just -- is that your signature at the
22 bottom of the page?

23 A. It is.

24 Q. And it's dated August 29th, 2008?

25 A. Yeah. I didn't date that, though.

26 Q. Okay. August 29, 2008 is the day that you filled
27 out and signed all these documents, correct?

28 A. Yeah.

1 Q. Okay.

2 A. I believe. But I didn't date that one. I don't
3 know why.

4 Q. All right. Just very quickly, you testified the
5 other day that when you and Miss Cordova finished signing
6 these documents, she -- she said that you needed to give
7 her -- give a check for \$2500 for the community fee.

8 Do you recall that?

9 A. Yes.

10 Q. Okay. And your testimony was that she was insistent
11 that she had to have the check then and there, right?

12 A. She needed it within a day or two.

13 Q. Okay.

14 A. She wanted it by the end of -- I know she wanted
15 it -- I don't know what the day of the week was, the 29th,
16 but she wanted it like by the 30th or 31st.

17 Q. Do you remember testifying yesterday that you called
18 your wife and she had to come down that afternoon and drop
19 off a check?

20 A. Yeah, I'm not sure it was that day. I think it was.
21 But it could have been -- and I could have gone to work the
22 next day and go, "Oh, shoot. I meant to drop that check by
23 and then forgot," and then given her a call.

24 Q. Okay. Very quickly, I won't even have to have you
25 pull the exhibit. But could we display Exhibit 178, page
26 12.

27 And that's -- that's the check that we've been
28 talking about that was --

1 A. Okay.

2 Q. -- delivered, right? A copy of it?

3 A. Yes.

4 Q. Okay. And actually, your wife -- it's dated August

5 30th. So your wife brought it by the next day.

6 A. So probably -- yeah. So it was probably what I just

7 said. I think I was going to grab it and then I forgot,

8 and called her to -- *Hey, they really need this today. Can*

9 *you get it down there?*

10 Q. Okay.

11 A. Sorry about that.

12 Q. Now, then there was a second set of documents that

13 were given to you and that you signed.

14 A. The take-home ones?

15 Q. Right.

16 A. Okay.

17 Q. Take a look at BF38.

18 A. All right.

19 Q. BF38 through 72. Actually --

20 A. It looks like 71.

21 Q. I think it goes all the way to 83.

22 A. Oh.

23 Q. Those were the documents that were given to you to

24 take home and fill out and bring back?

25 A. I believe so.

26 Q. All right. And so if you'd take a look at BF38.

27 A. Okay.

28 MR. REID: Can we put that up, your Honor?

1 Q. (By MR. REID) So this is the second set of
2 documents. It's the resident admission packet, right?

3 A. Yes.

4 Q. And so if we look at BF40, it looks like you're
5 signing the documents on September 16th, 2008, and then
6 Nancy is signing them on September 17th, 2008.

7 Correct?

8 A. Well, this is what we went over in my deposition.
9 That's not my signature.

10 Q. Oh, that's -- that's one of the ones that your wife
11 signed for you?

12 A. Right. I mean, that's my signature, but I didn't
13 sign it.

14 Q. Okay. Right. I think you told us that some of the
15 pages you signed, and some of the pages your wife signed
16 with your signature.

17 A. And I -- yes. I know we went over -- as far as I
18 know, all these -- my wife -- do you want me to just go
19 through them and see if I see any that I personally signed?

20 Q. Well, I'll tell you what, let me call some specific
21 ones to your attention --

22 A. Okay.

23 Q. -- and you tell me if it's your signature or if it's
24 your wife writing your signature.

25 A. Right. Okay.

26 Q. But before you do that, I just want to confirm. The
27 documents, do you think they were signed on -- by your side
28 or your team on September 16th, 2008?

1 A. I do. I don't have any reason to think not.

2 Q. Okay. And then were you there on September 17th,
3 when Nancy went over the documents and signed them?

4 MS. CLEMENT: Objection; it lacks foundation.

5 THE COURT: He can answer, if he can.

6 THE WITNESS: Yeah. My best recollection on that is
7 I just dropped off the documents. I was not there for when
8 Nancy signed these.

9 Q. (By MR. REID) Okay. So I'm flipping ahead here.
10 We won't talk about the pet agreement. There was no pets.

11 A. Okay.

12 Q. Okay. Let's look at BF63. This is the fall
13 disclosure statement.

14 Is that your signature --

15 MR. REID: Whoops. At the bottom. Sorry.

16 Q. (By MR. REID) Is that your signature at the bottom,
17 or is that your wife signing your signature?

18 A. Yeah. That's Kathleen.

19 Q. Okay. And did you review these documents?

20 A. That evening, I think we had all my dad's -- we were
21 looking at my dad's documents and -- I forget. I was
22 coaching or doing something. And I got home and she goes,
23 "Hey, I'll help you." And, yeah, we were just kind of
24 going over these together and she just signed them.

25 Q. Okay. I mean, you -- you gave her authority to sign
26 your name to these documents, right?

27 A. I did.

28 Q. Did you ask her to just go ahead and sign her own

1 name to the documents?

2 A. No. I thought for consistency Emerald Hills would
3 want it in my signature.

4 Q. Okay. Flipping ahead to 68, BF68 and 69.

5 A. Mm-hmm.

6 Q. Actually, let's look at 69, the signature.

7 Whose -- whose signature is that on BF69? Is that
8 you, or Kathleen, or...

9 A. It's my signature, but signed by Kathleen.

10 Q. Okay. So Kathleen signed your name to this
11 particular document?

12 A. Yes.

13 Q. All right. And going back to 68, which is --
14 because it's a two-page document.

15 Do you recall going over this statement of informed
16 choice of assisted living?

17 A. No, I don't recall.

18 Q. Okay. Do you -- this document talks about what
19 assisted living can do and what they can't do.

20 I think you were here for opening statement. I went
21 through it quite a bit.

22 Did --

23 MS. CLEMENT: Objection, your Honor. This is just
24 argument. It's not a question.

25 Can we please have a question?

26 THE COURT: Just ask the question, Counsel.

27 MR. REID: All right.

28 Q. (By MR. REID) The information in this informed

1 choice of assisted living page -- document, was this --
2 were you familiar with this information as of September of
3 2008?

4 MS. CLEMENT: I think it's compound, your Honor.
5 He's asking him for the entire document?

6 THE COURT: He says this page, this informed consent
7 page. That's the way I read the question.

8 MR. REID: Well -- you know, I'll ask the question a
9 different way, your Honor. I'll withdraw the question.

10 THE COURT: All right.

11 Q. (By MR. REID) The document, in the first paragraph,
12 says: Assisted living allows each resident to continue to
13 have freedom, autonomy and privacy, and because of this,
14 there are risks inherent to assisted living that are
15 similar to risks associated with independent living, since
16 our community does not provide one-on-one, 24-hour nursing
17 care.

18 In September of 2008, you knew that assisted living
19 did not provide one-on-one, 24-hour nursing care, right?

20 A. Yeah, that was more in conversation. Yeah. I had
21 no thoughts that they were going to be 24-hour, seven --
22 you know, I knew they had one nurse, full time, 40 hours a
23 week, Monday through Friday, and on-call on the weekends,
24 if their staff had a question or something like that. That
25 was explained to me. Basically they had seven days of
26 nursing, five in which she's in the building, two where
27 they can get ahold of someone if -- if they needed. So
28 that was -- that was okay.

1 Q. So -- so this -- this understanding you're telling
2 us about, five days a week, 40 hours a week, available
3 seven days a week, who did you have that conversation with?

4 A. That was conveyed to me by Nancy Cordova.

5 Q. Okay. And when -- which meeting was it when she
6 told you that specifically?

7 A. When we sat in August.

8 Q. And was that consistent -- never mind. I'll ask a
9 different question.

10 MR. REID: Could we go to the bottom of the page.

11 Q. (By MR. REID) It says -- it continues:

12 Unfortunately, the aging process can lead to loss of
13 skin integrity, increasing skin breakdown, skin tears and
14 bruising. Residents may be more prone to this risk if they
15 are receiving assistance with bathing and dressing, using a
16 wheelchair, or are diabetic, or otherwise in poor health.

17 In September of 2008, did you have an understanding
18 of that information?

19 A. No.

20 Q. Okay. The document says: At-risk residents should
21 consider purchasing pressure-relieving surfaces for beds
22 and/or wheelchairs to reduce the risk of skin breakdowns
23 and should immediately report any skin breakdown to their
24 physician.

25 Did you have an understanding in September of 2008
26 of this statement?

27 A. I was not aware of it, no.

28 Q. Okay. All right. And then the last paragraph:

1 Although we try to prevent damage -- whoops.

2 MR. REID: Next -- all the way down at the bottom.

3 "By signing."

4 Q. (By MR. REID) "By signing this agreement, you
5 acknowledge that the community informed you and that you
6 understand the community is not risk free; that, in fact,
7 the community promotes the appropriate exercise of resident
8 independence and privacy. You affirm that you freely
9 choose to move to our assisted living community with an
10 awareness of the associated risks." (As read.)

11 Did you read that last paragraph at or about the
12 time your wife signed your name to this document?

13 A. I don't remember that.

14 Q. Now, moving ahead, BF71. That looks, also, to be
15 your wife signing your name to this document.

16 A. Correct.

17 Q. Okay. And this was a -- going to BF70.

18 You're familiar with this document. It was an
19 agreement to resolve disputes by binding arbitration, true?

20 A. I'm sorry? It was what?

21 Q. An agreement to resolve disputes by binding
22 arbitration?

23 A. That's the title, yes.

24 Q. Okay. And, obviously, we're not in binding
25 arbitration. We're in trial.

26 I want to ask you if you recall signing declarations
27 concerning this particular portion of the contract.

28 Do you remember signing some declarations?

1 A. I do.

2 Q. Okay. Would you kindly pull out Exhibit 5018.

3 (Joint Exhibit Number 5018 was marked for
4 identification.)

5 THE WITNESS: Okay.

6 Q. (By MR. REID) Okay. Take a look at pages -- 5018,
7 001 through 007.

8 A. Take a look, or you want me to read this whole
9 thing?

10 Q. I want you to confirm for me that these are two
11 declarations that you signed under penalty of perjury, on
12 March 29th, 2010, and then, also, on May 25th, 2010.

13 (Pause.)

14 THE WITNESS: And how far did you want me to go?
15 I'm sorry.

16 Q. (By MR. REID) Could you take a look at page 003
17 and --

18 A. Okay.

19 Q. -- confirm your signature on that page.

20 A. That is my signature.

21 Q. And it's dated March 29th, 2010? That's right above
22 your signature there?

23 A. Oh. Yes.

24 Q. Okay. And then would you like at page 007.

25 A. Okay.

26 Q. And is that your signature?

27 A. It is.

28 Q. And that's dated the 25th day of May, 2010?

1 A. Correct.

2 MR. REID: Okay. I'd offer these two -- this
3 exhibit, your Honor, into evidence.

4 THE COURT: The exhibit also contains a declaration
5 of Kathleen Boice in that file as well. And I haven't
6 heard anything with respect to that at this point.

7 MR. REID: Okay. Then I would offer pages 001
8 through 007 into evidence, your Honor.

9 THE COURT: Any objection?

10 MS. CLEMENT: No objection, your Honor.

11 **(Joint Exhibit Number 5018, pages 1 through 7, was**
12 **marked for identification.)**

13 THE COURT: All right. Then with respect to 5018,
14 pages one -- what did we say? -- through seven are
15 admitted.

16 **(Joint Exhibit Number 5018, pages 1 through 7, was**
17 **received into evidence.)**

18 Q. (By MR. REID) I wanted to ask you a couple
19 questions about the declaration.

20 MR. REID: Could we display page one of that
21 exhibit, your Honor?

22 THE COURT: Yes.

23 Q. (By MR. REID) Okay. Paragraph -- right down at the
24 bottom, paragraph four, you declared that your father,
25 Myron, remained mentally competent throughout the time that
26 your parents lived at Emerald Hills.

27 And that's consistent with what you've been saying,
28 right?

1 A. Yes.

2 Q. Okay. Now, if we go to page two, paragraph six. In
3 paragraph six, you talked about the durable power of
4 attorney document we looked at yesterday, right? Executed
5 in 2004?

6 A. Yes.

7 Q. All right. And you had attested that it was your
8 mom's signature on the document, right?

9 A. Correct.

10 Q. And then according to your declaration, as far as
11 you were aware, your mother never revoked the durable power
12 of attorney, nor did she ever express an intent to have
13 anyone other than Myron make healthcare or legal decisions
14 for her, correct?

15 A. Correct.

16 Q. And then paragraph seven on the next page, you
17 indicated that your father, Myron, did make various
18 decisions on behalf of your mom as her dementia progressed,
19 correct?

20 A. Yes.

21 Q. And you -- you attached the do not resuscitate that
22 we looked at yesterday, dated December 27th, 2007, correct?

23 A. Correct.

24 Q. And then you also stated in your declaration that on
25 September 22, 2008, your father accompanied your mother to
26 the emergency room and signed the emergency department
27 after care form on behalf of your mother that day, correct?

28 A. Yes.

1 Q. And then you said your father remained involved in
2 your mother's care until her death and never expressed an
3 unwillingness to make decisions for her, correct?

4 A. Yes.

5 Q. Okay. If you would turn to page five, which is part
6 of the second declaration that you signed.

7 A. Okay.

8 Q. And look at paragraph seven.

9 A. Okay.

10 Q. This is where you -- you put in your declaration
11 your testimony that you would use the letters "POA" after
12 your name, but you were not familiar with the legal
13 requirements for acting under a power of attorney.

14 Kind of consistent with what you've been saying,
15 right?

16 A. Yes.

17 Q. And then -- and you indicate -- you told us -- you
18 indicated that -- about how someone with Kaiser advised you
19 to put "POA" after your name, right?

20 A. It says Kaiser in there? I'm --

21 Q. Well, maybe it doesn't. But someone told you if you
22 put "POA" after your name you can have her records and make
23 her --

24 A. Yeah. And that's -- during the deposition, I
25 explained -- I wasn't one hundred percent sure it was a
26 Kaiser person, but that's kind of by process of
27 elimination. That's what I figured.

28 Q. Okay. And so as we head through paragraph seven

1 onto the next page.

2 From then on, you would just -- you would use the
3 term "power of attorney" when it seemed appropriate in
4 connection with completing forms for your mom, correct?

5 A. Yeah. If it helped my mom, yes.

6 Q. And then down in paragraph nine, you again declared
7 that on September 22nd, 2008, your father accompanied your
8 mother to the emergency room and signed the emergency
9 department after care form on her behalf, correct?

10 A. Correct.

11 Q. Okay. So who -- when -- going back now --

12 MR. REID: Thank you. We can have the lights.

13 Q. (By MR. REID) When your mom was at Emerald Hills,
14 who was the staff supposed to be communicating with when
15 there were issues or observations about your mom?

16 A. With Kathleen or myself.

17 Q. But your dad was the power of attorney and the one
18 that was making the healthcare decisions, right?

19 A. Correct.

20 Q. Okay. Different topic.

21 Through Dr. Locatell we saw some photographs that
22 were taken of different wounds on your mom's body.

23 Do you recall that?

24 A. I didn't see them.

25 Q. Okay. But you -- you did -- you're the one that
26 verified the discovery responses. You verified -- attested
27 to the authenticity of those pictures early on in the
28 lawsuit, right? Correct?

1 A. Correct.

2 Q. Okay. And could you take a look at Exhibit 5017,
3 please.

4 A. It's not a picture, is it?

5 Q. Just look at the first page. 5017.

6 **(Joint Exhibit Number 5017 was marked for**
7 **identification.)**

8 Q. (By MR. REID) And I will let you know, there's some
9 pictures behind that. You don't need to look at them.
10 We're not going to look at those.

11 A. Okay.

12 Q. I'm just going to ask you to look at the first four
13 pages of that.

14 A. 5017-01?

15 Q. 001, 002, 003 and 004. Could you take a look at
16 those pages for me.

17 A. Okay.

18 Q. All right. And that's your signature on page 004,
19 correct?

20 A. It is.

21 **(Joint Exhibit Number 5017, pages 1, 2, 3 and 4, was**
22 **marked for identification.)**

23 Q. (By MR. REID) And you signed this verification on
24 July 15th, 2010, verifying the answers to the questions on
25 the prior pages, correct?

26 A. Correct.

27 Q. All right. Now, with respect to page zero --

28 MR. REID: Your Honor, I would offer pages 5017, 001

1 through 4 into evidence.

2 MS. CLEMENT: Objection, your Honor. Could we be
3 heard at sidebar?

4 THE COURT: Yes. Come on up.

5 MS. CLEMENT: Thank you.

6 (Whereupon an unreported bench conference was then
7 had in open court between the Court and counsel.)

8 MS. CLEMENT: Thank you, your Honor.

9 Q. (By MR. REID) So on July 15th, 2010, when you first
10 gave us the pictures that -- that were taken of your mom's
11 wounds, you told us that they were taken on December 17th,
12 2008, correct?

13 A. Did I tell you that?

14 Q. Right.

15 A. The document said that.

16 Q. Okay.

17 A. But, yeah, that was a mistake.

18 Q. Okay. You signed a verification, confirming that
19 the photos that we saw were taken on December 17th, 2008,
20 correct?

21 MS. CLEMENT: Object. Are you --

22 I'm sorry, your Honor. I'm going to object to the
23 question if he's referencing 5017. Misstates the document.

24 MR. REID: I didn't reference a document, your
25 Honor. I just asked a question.

26 THE COURT: He can answer.

27 THE WITNESS: I'm sorry. What was the question?

28 MR. REID: Could I ask the Court to have the

1 reporter read the question back?

2 THE COURT: Go ahead.

3 (Record read.)

4 THE WITNESS: I signed this document. Um, I'm
5 trying to find where it says when the pictures were taken.

6 Q. (By MR. REID) Look at page two of the document,
7 near the bottom.

8 A. Okay. Yes.

9 Q. Okay. So I have that right, correct?

10 A. Well, I'm telling you it was a mistake.

11 Q. Okay. But back in July of 2010, you verified under
12 penalty of perjury that those pictures were taken on
13 December 17th, 2008?

14 A. Yeah.

15 MS. CLEMENT: Misstates the document, your Honor.

16 MR. REID: I'm not asking about the document, your
17 Honor. I'm asking about --

18 THE COURT: You don't need to argue with her. Just
19 give me a moment, please.

20 MR. REID: Yes, your Honor.

21 (Pause.)

22 THE COURT: Okay. Mr. Reid, separate and apart from
23 Miss Clement's position, your question said these pictures
24 here that we have seen. I believe I heard the witness say
25 that he was not in the courtroom when the pictures were
26 shown. So he would not be in a position to respond to what
27 we saw here. If you are asking him to review the pictures
28 that were appended to this production, then we're in a

1 different question because you originally said to him he
2 didn't have to look at it.

3 MR. REID: Okay. I don't want to make him look at
4 the pictures, so I will move on, your Honor.

5 THE COURT: All right. Thank you.

6 Q. (By MR. REID) I would like you to take a look at
7 Exhibit 5040.

8 **(Joint Exhibit Number 5040 was marked for**
9 **identification.)**

10 MR. REID: If I could approach?

11 THE COURT: Yes.

12 Q. (By MR. REID) Let me see if I can help here.

13 A. It's not in this one.

14 Q. Well, they continue on. So this --

15 THE COURT ATTENDANT: That's it. That's it.

16 THE WITNESS: You said 5040.

17 Q. (By MR. REID) I know. We've been adding on to the
18 numbers.

19 A. Oh, okay.

20 Q. Sorry about that. My fault.

21 Okay. Could you take a look at the last page of
22 that document.

23 A. 5040, correct?

24 Q. Correct.

25 A. Okay. Just the last page?

26 Q. I want you to confirm your signature for me on that
27 page.

28 (Pause.)

1 THE WITNESS: Okay.

2 Q. (By MR. REID) Okay. So that's your signature. And
3 you dated it October 3rd, 2012.

4 So this past October, correct?

5 A. Correct.

6 Q. And you were verifying the information contained in
7 the -- the document, correct?

8 A. Correct.

9 MR. REID: All right. I'd offer 5040 into evidence,
10 your Honor.

11 MS. CLEMENT: Your Honor, we discussed this before.
12 The defendant has -- there's information in this document
13 that needs to be redacted, which they haven't done.

14 MR. REID: We can --

15 THE COURT: I'm sorry. There's information in 5040
16 that needs to be redacted?

17 MS. CLEMENT: Yes, your Honor. Could we be heard at
18 sidebar?

19 THE COURT: Yes.

20 MS. CLEMENT: Thank you.

21 (Whereupon an unreported bench conference was then
22 had in open court between the Court and counsel.)

23 THE COURT: All right. Ladies and gentlemen,
24 consistent with some prior rulings we've made, and to
25 protect certain matters of privacy issues and otherwise,
26 we're going to have to take certain things out of this
27 document before it is actually shown to you.

28 So I'm going to admit Exhibit 5040 into evidence,

1 subject to what we call "redacting." You will not
2 necessarily see it right now. But, perhaps, Mr. Reid will
3 be talking to you about it later on. Okay?

4 MR. REID: Okay. Thank you.

5 **(Joint Exhibit Number 5040 was received into**
6 **evidence.)**

7 Q. (By MR. REID) So if you would, Mr. Boice, take a
8 look at the third page of this document. It's an
9 interrogatory response, or a response to some questions we
10 asked you, correct?

11 A. Yes.

12 Q. And in -- on page three, in response to a question
13 requesting any photographs concerning the incident or
14 plaintiff's injuries, your original response says that you
15 were producing 20 photographs taken on December 17th, 2008,
16 correct?

17 A. Correct.

18 Q. And they were of Joan Boice, correct?

19 A. Correct.

20 Q. And in response to Section C, which says the date
21 the photograph, film, or videotape were taken, you again
22 said December 17th, 2008, correct?

23 A. Correct.

24 Q. And then in response to the person that took the
25 photos, you said Kathleen Boice, your wife, correct?

26 A. Correct.

27 Q. And then where the photos were, you said they were
28 in plaintiffs' counsel's position, correct?

1 A. Correct.

2 Q. All right. Then on October 3 -- 3rd, 2010, two
3 years later, you changed your answer, correct?

4 A. Correct.

5 Q. October 3, 2012, you changed your answer two years?

6 A. Yeah, we didn't see this mistake until then. Yeah.

7 Q. Okay. And October -- do you happen to know whether
8 that was after Dr. Locatell had had her deposition taken,
9 October 3rd, 2012?

10 A. I don't know.

11 Q. Okay. At any rate, on October 3rd, 2012, your
12 answer -- you changed your answer to say: The photographs
13 were taken on December 8th, 2008, and sent to plaintiffs'
14 counsel on December 17th, 2008. The date was incorrectly
15 noted from the date sent.

16 Correct?

17 A. That is correct.

18 Q. So at this point in time, it's your understanding
19 and belief that your wife took the pictures on December
20 8th; is that correct?

21 A. I know she did.

22 Q. And that was four days after she moved to
23 Foothill Oaks, correct?

24 A. Correct.

25 Q. And do you know whether anybody else took any photos
26 of your mom at that point in time at Foothill Oaks?

27 A. I don't know.

28 Q. I wanted to follow up on -- I know that you were

1 very upset when you talked about finding out from your wife
2 about the wounds.

3 Do you recall that?

4 A. Yes.

5 Q. Okay. In your deposition you told me that the
6 wounds, in your mind, were unspeakable. Correct? Remember
7 using that word?

8 A. I don't remember using that word, but it's a good
9 description.

10 Q. And you -- you told me in your deposition that as
11 your wife was explaining what she saw, you -- you were as
12 shocked as -- you felt like you had discovered a mass grave
13 from a World War II Nazi Germany.

14 Do you recall that, saying that?

15 A. I don't recall that, but okay.

16 MR. REID: If I may approach the witness to refresh
17 his recollection, your Honor?

18 THE COURT: All right.

19 Q. (By MR. REID) Just take a look at that part right
20 there (indicating).

21 (Pause.)

22 THE WITNESS: Okay.

23 Q. (By MR. REID) Does that refresh your recollection
24 of telling me in your deposition that it felt like
25 discovering a mass grave from World War II, from Nazi
26 Germany?

27 A. Yes.

28 Q. And -- but notwithstanding that, you didn't call the

1 police and alert them of your concerns, did you?

2 A. No.

3 Q. You didn't call the ombudsman, did you?

4 A. I didn't know what they were.

5 Q. And you didn't call the Department of Social
6 Services?

7 A. Didn't know about that.

8 Q. And you didn't call Adult Protective Services and
9 alert them of your concerns?

10 A. No.

11 Q. How long did you -- were you a police officer?

12 A. Fifteen years.

13 Q. Did you alert any authorities, government
14 authorities or officials about your concerns about your
15 mother's wounds or care at that -- in December of 2008?

16 A. No, I did not.

17 Q. And -- and you told me in your deposition, if you
18 recall, that the only -- you never expressed your
19 complaints regarding your mom's care to anyone above Nancy
20 Cordova in the Emeritus organization, true?

21 A. She continued to assure us that things were going to
22 get better. Yeah.

23 Q. Now, when your mom was at Foothill Oaks, did -- did
24 she get out of bed and participate in activities there?

25 A. Did she get out of bed, like on her own?

26 Q. Was she in -- well, I'll ask the question
27 differently.

28 Did your mom ever get out of bed when she was at

1 Foothill Oaks?

2 A. She was out of bed quite often at Foothill Oaks.

3 Q. Okay. And did she participate in activities there?

4 A. We tried.

5 Q. I'd like you to take a look at Exhibit 5012.

6 They're some additional photos.

7 A. In this same binder?

8 Q. I'm not sure.

9 MR. REID: If I may approach?

10 **(Joint Exhibit Number 5012 was marked for**
11 **identification.)**

12 Q. (By MR. REID) There's 11 photographs in
13 Exhibit 5012.

14 And do you recognize the people in the photographs?

15 A. Yes.

16 Q. Who are the various people in those photographs?

17 A. In this first one?

18 Q. Okay. The first one.

19 A. It's my father, my mom, myself, my brother and my
20 sister.

21 MR. REID: I'd offer exhibit 5012 into evidence,
22 your Honor.

23 THE COURT: Counsel, there are multiple photographs.
24 There are some different people, I think, in the later
25 photographs.

26 THE WITNESS: Yes.

27 THE COURT: If you could have him identify those or
28 tell us where they came from, please.

1 Q. (By MR. REID) Okay. Who else are in those
2 photographs of Exhibit 5012?

3 A. My son Justin, my wife Kathleen. And I think that's
4 it. My daughter wanted to take the photographs.

5 Q. Okay.

6 A. So, yeah. Just my son I see several times and
7 Kathleen.

8 Q. All right. And when were the -- when were those
9 photos taken?

10 A. Mid-December. This is when my brother flew out.

11 Q. Okay.

12 MR. REID: All right, your Honor. I'd offer the
13 photos into evidence.

14 THE COURT: Any objection?

15 MS. CLEMENT: No, your Honor.

16 THE COURT: Okay. 5012 is admitted.

17 **(Joint Exhibit Number 5012 was received into**
18 **evidence.)**

19 Q. (By MR. REID) All right. Let's take a look at the
20 first photograph, if we could.

21 A little bit blurry. But you described your dad and
22 you, and Mark and Nancy, and your mom, right?

23 A. Correct.

24 Q. And this was mid-December at Foothill Oaks?

25 A. Yes.

26 MR. REID: Okay. Could we look at the next picture.
27 Let's go to the third one.

28 No. Let's go to the fourth one.

1 Q. (By MR. REID) Tell us what was -- tell us -- do you
2 remember this day?

3 A. I do.

4 Q. What was happening on that day?

5 A. Just a family visit.

6 Q. Okay. Everybody looks pretty happy.
7 Was it a happy time?

8 A. We -- no.

9 Q. Okay. What was your mom's condition like that day?
10 Was she happy?

11 A. Hard for me to say. I don't know.

12 Q. Okay. Take a look at the next one.
13 And the next.

14 Okay. Do you remember what time of day that this
15 was taken?

16 A. It was mid-afternoon. It was still daylight out.
17 She had a window right behind my wife there, to the right.

18 Q. Okay. What was your mom's ability at that point in
19 time to communicate?

20 A. Verbally?

21 Q. Right.

22 A. Almost nothing.

23 Q. Okay.

24 A. She could -- she could express. She could grimace.
25 I could see things in her eyes, no doubt.

26 Q. Okay.

27 A. She could squeeze hands.

28 Q. I never knew your mom. She looks pretty happy in

1 that picture.

2 Was she happy at that time?

3 A. We were pleased with these pictures, but the whole
4 thing was -- I called my brother and I said based on what
5 the doctor had told us that this was probably the last time
6 that we would be together as a family.

7 Q. Help us understand. Was your mom happy that day?

8 A. I don't know if she had that ability. She did smile
9 a few times, and that's why we were really happy with the
10 pictures and the way they came out, no doubt.

11 MR. REID: Can we take a look at the next picture.

12 Q. (By MR. REID) And that's Mark, right?

13 A. Yes.

14 MR. REID: And the next picture.

15 Q. (By MR. REID) And that's you and your mom?

16 A. That's me with hair.

17 Q. That's hair?

18 (Laughter.)

19 THE WITNESS: Yeah. That's why I started going this
20 way.

21 Q. (By MR. REID) I'm sorry. I couldn't help it.

22 MR. REID: All right. Thank you. We can get the
23 lights back on.

24 Q. (By MR. REID) Now, we -- we've seen a number of
25 photos, and I think we'd asked in discovery for any photos
26 taken of the last six months of your mom's life.

27 And I want to ask you, you know, are you aware of
28 any other photos of your mom, other than the ones that had

1 to do with her wounds? We saw the one with the spider hat
2 and those photos. Were there any other photos taken those
3 last six months?

4 A. One of my deficiencies is taking photographs.

5 Q. Photo journalism?

6 A. Exactly. My children are going to be deprived. So,
7 yeah, we just didn't have very many.

8 Q. Okay. Well, we know that your mom spent
9 Thanksgiving at Emerald Hills, or at least she was living
10 at Emerald Hills during Thanksgiving.

11 Did she come home that weekend with the family over
12 Thanksgiving?

13 A. She did not.

14 Q. And did -- did you guys go down and spend
15 Thanksgiving with her?

16 A. We actually took my dad to Disneyland.

17 Q. Oh. Okay. And how long -- so -- so you guys were
18 not in town on Thanksgiving.

19 A. Correct.

20 Q. I think maybe -- if I heard right -- maybe Nancy was
21 in town with your mom during Thanksgiving?

22 A. She may -- yeah, she may have been here.

23 Q. And then Christmas, your mom was at Foothill Oaks.

24 Did your mom ever go back to your home after she
25 moved to Foothill Oaks?

26 A. I don't think so.

27 Q. And did you spend Christmas day with your mom at
28 Foothill Oaks?

1 A. We did. I mean, not the entire day, but --

2 Q. Sure.

3 A. -- we were there for several hours.

4 Q. Were there pictures taken at that time?

5 A. I don't -- I would have them. No.

6 Q. And -- okay. Those are all the questions. Thank
7 you very much.

8 A. Okay.

9 MS. CLEMENT: Thank you.

10 THE COURT: Miss Clement.

11 REDIRECT EXAMINATION

12 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
13 the Plaintiffs:

14 Q. Hi, Eric.

15 Can you tell us, what was your understanding as to
16 why you were signing those two declarations that Mr. Reid
17 went over?

18 A. Twice Emeritus had attempted to block this process
19 from being heard by a jury.

20 Q. And was it your understanding that the purpose of
21 the declarations was with regard to who could legally bind
22 your mother to an arbitration agreement as a durable power
23 of attorney for healthcare?

24 A. Yes.

25 Q. And was it your understanding, as you explained to
26 the jurors yesterday, that the durable power of attorney
27 for healthcare as you understood it was first your father,
28 and then if your father couldn't act, you and your brother

1 jointly?

2 A. Correct.

3 Q. And in your deposition -- well, let me ask you this:
4 How many days did Mr. Reid take your deposition?

5 A. Three days.

6 Q. And in your deposition, did he go over that part of
7 the deposition where -- of those two declarations where it
8 says your dad accompanied your mom to the emergency room?

9 A. He did.

10 Q. And did you, like, type up that declaration
11 yourself?

12 A. I did not.

13 Q. Was that somebody in my office?

14 A. It was.

15 Q. And what did you explain to Mr. Reid about that word
16 accompanied "to" the emergency room?

17 A. I said it appeared to be a semantic error; that my
18 father did not accompany my mother to the emergency room
19 when she had her fall, he responded there. He responded
20 later. He was the one that went down there.

21 Q. Did your dad accompany your mom "from" the emergency
22 room, not "to" the emergency room?

23 A. Yes. My father brought my mother home.

24 Q. And you signed all the documents at Emeritus on your
25 mom's behalf.

26 And why did you do that?

27 A. Um, I think I told Mr. Reid in deposition, I was her
28 son. I just -- I figured that I could do it. Um -- and,

1 quite frankly, I just wanted to make things easier. She --
2 she -- you know, I didn't want her to be burdened with it,
3 or even my father. He didn't understand things very well,
4 so I just wanted to take the burden from each of them
5 and -- *I'll take care of this for you.*

6 Q. Did you handle the finances for your parents once
7 they moved to The Palms?

8 A. I handled primarily bills.

9 Q. So did you -- go ahead.

10 A. I'm sorry. Yeah, bills that needed to be paid. My
11 father, he handled his own spending, you know, going to the
12 store or whatever he wanted to do. But I took care of
13 their bills for them, yes.

14 Q. And was it your understanding that at both The Palms
15 and at Emerald Hills, you and your wife Kathleen were
16 listed as the responsible parties to call if something
17 happened?

18 A. That is correct.

19 Q. And -- and did you have some problems at
20 Emerald Hills that resulted in you and your wife asking
21 Emerald Hills to please call you guys first before telling
22 stuff to your dad?

23 A. Yes.

24 Q. And is that why -- well, you started to tell us
25 that, but I think you got cut off.

26 Can you explain to the jurors why you guys wanted
27 that to happen that way.

28 A. Primarily because -- my father at that time was

1 upset about what was happening with my mom. And he
2 would -- he would just take things either out of context or
3 make them bigger than -- little things and just kind of
4 make them -- and get really upset about it, to the point
5 of, you know, emotionally upset, couldn't eat. So we were
6 trying to, again, alleviate that. *Hey, run it by us. Let*
7 *us determine how we want to break this to my father. Let*
8 *us be the ones, not somebody who he doesn't know.* And so
9 that's what -- we were just simply trying to -- to help him
10 a little bit more.

11 Q. The full-time nurse that you told the jurors about,
12 was that -- you said it was consistent with what Nancy
13 Cordova told you.

14 Was that also consistent with what Melissa Gratiot
15 told you on this --

16 MR. REID: It's leading, your Honor.

17 THE COURT: Sustained.

18 Q. (By MS. CLEMENT) Did anyone besides Nancy Cordova
19 talk to you about a full-time nurse?

20 A. Yes.

21 Q. Who?

22 A. Melissa Gratiot.

23 Q. In your 15 years as a police officer, did you ever
24 investigate nursing homes or assisted living facilities for
25 elder abuse?

26 A. Never.

27 Q. Those documents that Mr. Reid showed you today, the
28 statement of informed consent and the fall risk and those

1 things, were those signed by your wife with your
2 permission?

3 A. Yes.

4 Q. And were those signed after your mom had moved in?

5 A. Yes.

6 Q. Did you have any understanding by signing those
7 things that Emeritus could neglect your mother?

8 MR. REID: You know, it's leading and argumentative,
9 your Honor.

10 THE COURT: He can answer.

11 THE WITNESS: Not at all.

12 Q. (By MS. CLEMENT) Did you ever suspect that any of
13 those documents meant that Emeritus wouldn't be responsible
14 for providing the care and custody of your mom?

15 A. Nah, not at all.

16 Q. Did you ever have an understanding that by signing
17 those documents, or any documents with Emeritus, that
18 Emeritus would not be observing your mom and complying with
19 the regulations governing them?

20 A. No.

21 Q. When you saw those e-mails that were shown --

22 THE COURT REPORTER: I can't hear you, Counsel.

23 MS. CLEMENT: I'm sorry.

24 Q. (By MS. CLEMENT) When you saw the e-mails today
25 between your wife and Peggy, and then Nancy, December 1st
26 and 2nd, did you think that Peggy or Nancy were lying to
27 you on December 1st or December 2nd?

28 A. Did I think then?

1 Q. Yes.

2 A. No, I had no reason to.

3 Q. Was -- did there come a point in time when you
4 thought that you'd been lied to by Emeritus?

5 A. Certainly afterwards, yes.

6 Q. When was that?

7 A. Well --

8 Q. When was the first time you had questions?

9 A. When we discovered all the wounds. That was, um --
10 we realized that those had been concealed. They didn't
11 let -- we didn't know anything about them, except for one
12 that was -- we were told was being managed, that was
13 improving.

14 MS. CLEMENT: Erik, could you put up Exhibit Number
15 3, the admission agreement. Page seven.

16 Not six, Erik. Go back.

17 Number eight.

18 Q. (By MS. CLEMENT) Was it your understanding, based
19 on what was shown to you but it wasn't pointed out here,
20 that Emeritus was going to assist with arranging needed
21 appointments for your mom, if necessary?

22 A. Yes.

23 MR. REID: It's leading, your Honor.

24 THE COURT: Sustained.

25 Q. (By MS. CLEMENT) Well, does the document say that
26 Emeritus is going to assist with arranging needed
27 appointments with medical professionals and healthcare
28 services, if needed?

1 A. Yes.

2 MS. CLEMENT: Okay. Can you show us the top of page
3 eight, number 11.

4 Q. (By MS. CLEMENT) And did the agreement also
5 indicate that Emeritus would be observing your mom's health
6 status and reporting and providing consultations regarding
7 your mom's health issues?

8 A. Yes.

9 (Lesley Clement confers with Erik Urias,
10 videographer.)

11 Q. (By MS. CLEMENT) So looking on page 34, the
12 Residents' Rights, did the agreement also indicate that
13 your mother was going to be accorded dignity in her care
14 and safe and healthful accommodations?

15 A. Yes.

16 Q. And it also indicated that your mom and her family
17 or responsible persons would be regularly informed
18 regarding activities related to her care, including ongoing
19 evaluations, as appropriate to meet her needs?

20 A. Yes.

21 Q. When was the first time you heard about your mom
22 having wounds on her body, of any sort? Was that the
23 November 3rd?

24 A. That is. November 3rd.

25 MR. REID: It's leading, your Honor.

26 THE COURT: He can answer. And he did.

27 Q. (By MS. CLEMENT) How did you feel when you heard
28 Jenny Hitt testify that she'd been treating those wounds on

1 your mom's bottom and on her feet for weeks before that?

2 MR. REID: I'm going to object that it's not
3 relevant.

4 THE COURT: He can answer. The objection is
5 overruled.

6 THE WITNESS: Angry and sorrow.

7 MS. CLEMENT: Thank you. No further questions.
8 Thank you, Terrance.

9 THE COURT ATTENDANT: You're welcome.

10 THE COURT: Anything else, Mr. Reid?

11 MR. REID: No, your Honor.

12 THE COURT: Ladies and gentlemen, I'm going to
13 collect your questions and then we'll take our morning
14 break.

15 Would you please hand them to Terrance.

16 (Pause.)

17 THE COURT: Okay. Twenty minutes. So five to.
18 We're in recess.

19 Counsel approach, please.

20 (Whereupon an unreported bench conference was then
21 had in open court between the Court and counsel.)

22 (Recess.)

23 (Change of court reporters.)

24 ---o0o---

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1 **(The following proceedings were held in open court, outside**
2 **the presence of the jury:)**

3 COURT ATTENDANT: Please make sure your cell phones
4 are off. Come to order. Department 45 is once again in
5 session. The honorable Judge Judy Hersher presiding. You
6 may be seated.

7 THE COURT: All right. Mr. Boice, you've seen how we
8 have done this.

9 THE WITNESS: Yes.

10 THE COURT: One juror asks, Why did you not simply
11 quit Emerald Hills and give 30 days notice as soon as you
12 realized the extent of your mother's situation?

13 THE WITNESS: I -- I think that's referring to after
14 December 4th. Um, my best answer to that is I didn't care,
15 um, about letting them know, you know, about anything. Once
16 we realized the extent of the abuse, um, and the neglect
17 committed against mom, um, giving them the courtesy of a
18 30-day notice was about as low on my priority as it could
19 be.

20 THE COURT: This juror heard your testimony about when
21 you left the morphine with the office staffer because the
22 nurse was not available.

23 Did you check back to verify the morphine had been
24 received and was being provided to your mother? That is
25 really two questions.

26 Did you check back that the morphine had been
27 received?

28 THE WITNESS: I did.

1 THE COURT: Did you check back to see if the morphine
2 was being provided to your mother?

3 THE WITNESS: The next day I stopped by, which would
4 have been a Sunday, to confirm that the med techs did indeed
5 have it that day. And I was able to contact one person that
6 day and they had received it.

7 THE COURT: How about giving it to your mom, did you
8 confirm that they were giving it to her?

9 THE WITNESS: No. I trusted, you know, that they --
10 since they received it.

11 THE COURT: You were told that there was one open spot
12 in the Memory Care Unit.

13 Did it seem full after your mother moved in?

14 THE WITNESS: It was close. I don't know. I want to
15 say they had a capacity for 18, and I think they had 15 or
16 16 people in there. So it was -- it was close. But, again,
17 I'm not sure if that was a sales thing, hey, you have got to
18 act now, you have got to do it now. I -- I don't know. I'm
19 not sure.

20 THE COURT: One of the jurors had asked, and I'm going
21 to respond to this, whether or not the case went through
22 arbitration first. The answer is, no, it did not.

23 Did your wife take the photos of your mother with a
24 digital camera?

25 THE WITNESS: She did.

26 THE COURT: How did you learn about the mistake on the
27 date of the -- dates that the photos were taken?

28 THE WITNESS: I'm not sure how we learned about it.

1 It, um, it did come up, and I was asked to confirm the dates
2 and I said December 8th. Um, I went back and looked at our
3 digital copies of when they were taken and confirmed
4 December -- and I didn't even realize that another date had
5 been given. Um, and the date that was given was the date
6 that we actually sent them, e-mailed them to Ms. Clement's
7 office, and that's the date that was used, which was
8 December 17th.

9 THE COURT: Is your father, Myron Boice, still alive?

10 THE WITNESS: No. Dad passed away nine months after
11 my mother did.

12 THE COURT: If you know, how long was your father
13 feeding your mother prior to moving into the Palms?

14 THE WITNESS: I didn't even know that that was
15 happening until they moved to the Palms. Um, so I never saw
16 it before that. I did notice it, um, when we got to the
17 Palms.

18 THE COURT: Well, the question was, did you ever find
19 out how long your father was feeding your mother before they
20 moved to the Palms?

21 THE WITNESS: Before? No, I did not.

22 THE COURT: Okay. One of the other jurors wanted us
23 to ask you some questions about what your wife knew, but,
24 ladies and gentlemen, Kathleen Boice will be here
25 testifying, and we will just wait for her to tell us what
26 she knew.

27 Do you consider yourself to be a victim of false
28 information?

1 THE WITNESS: Our family -- my father and all of us
2 were definitely victims of false information.

3 THE COURT: This juror is referring to Exhibit 3, page
4 12, section D, article 1 which, according to the juror,
5 indicated that the -- that Emeritus did not supply care for
6 mental or emotional disorders.

7 The question then is: In your opinion did this --
8 does this go against your understanding, if at all, about
9 what the memory care facility was offering?

10 THE WITNESS: Yeah. That was the first I had seen
11 that this morning. And, yeah, like I said, that -- that
12 makes absolutely no sense. If you have a Memory Care Unit
13 that are serving dementia patients, the whole premise is
14 that they have a mental incapacity, something is mentally
15 wrong.

16 THE COURT: Was this section of the contract, um,
17 explained to you at any time?

18 THE WITNESS: No.

19 THE COURT: You mentioned that Emerald Hills billed
20 you after your mother's death.

21 How many months were they billing you for?

22 THE WITNESS: I believe our bill got up to around
23 \$12,000. They billed, I think, December and January, and
24 finally in February the bill stopped coming. But three more
25 months.

26 THE COURT: Do you know why they kept billing you?

27 THE WITNESS: I guess because we didn't give them a
28 30-day notice.

1 THE COURT: Referencing the agreement that was signed
2 that indicates that Emerald Hills does not perform nursing
3 care, what was your understanding of why a nurse was on
4 staff at Emerald Hills?

5 THE WITNESS: To provide nursing care. Um, I -- I
6 didn't have a belief that she would -- my mom would have
7 exclusive access to the nurse but that she would be
8 available for medical care as needed to -- to any of the
9 residents.

10 THE COURT: What, if anything, did Emeritus tell you a
11 nurse was there to do?

12 THE WITNESS: Just that, that if the need arose for
13 small wound care, um, that she could be in charge of
14 assessments, evaluations, that she could say, hey, you need
15 to go -- we need to refer you out, you need a doctor to see
16 this or I can dress that, you know, we can handle that
17 in-house. It would be her decision from a medical
18 standpoint to -- to make those decisions. And that was
19 comforting to us as a family that someone would be there for
20 that purpose.

21 THE COURT: At any time did your father ask you to
22 take over things regarding your mother and him?

23 THE WITNESS: He asked me to not take over but
24 certainly help with the finances. Um, although I -- I'm
25 thinking of little things like magazine subscriptions. My
26 dad had, um, um, National Geographic and couple of others,
27 you know, so I paid those, you know, wrote the checks and --
28 but he gave me the bills and said, Hey, can you take care of

1 this?

2 He -- he, I was almost going to say, religiously
3 donated to a church but that doesn't sound right. But he
4 donated to his church back in the Bay Area every month, I
5 wrote a check to them every month. So I handled that for
6 him.

7 But mostly at his, you know -- he told me what -- the
8 monthly bills that were reoccurring for like their
9 prescriptions, I don't think he had much input because I
10 think we had those bills sent directly to us so I -- he
11 didn't have to even deal with that, um --

12 THE COURT: Okay.

13 THE WITNESS: You asked what other things I took care
14 of?

15 THE COURT: No. The question was really, did your dad
16 verbally ask you or ask you to take over things for he and
17 your mother?

18 THE WITNESS: Yes. On the financial matters he did.

19 THE COURT: Okay.

20 THE WITNESS: On the -- on the -- can I address the
21 health?

22 THE COURT: If -- if that is what your dad asked you
23 to take over for him.

24 THE WITNESS: Okay. He didn't ask me to take over.

25 THE COURT: Okay. What impression did you have, if
26 any, about the sales pitch that was presented to you at
27 Emeritus?

28 THE WITNESS: It was, um, it was certainly pressure

1 but it was also reassuring. There was a sense that, um --
2 yeah, they reiterated a lot of stuff about the similarities
3 with -- with where we were having a good experience at the
4 Palms. So there was some reassurance -- reassuring there.
5 But it was a lot of pressure to sign today, sign on the
6 dotted line because -- because they also knew we were
7 looking at a couple of other facilities that my father had
8 looked at. So my brother and sister and my father had gone
9 to another facility also in Auburn. Um, so they knew that,
10 you know, get them now, get them signed up so...

11 THE COURT: Do you believe that your mother
12 experienced transfer trauma when she was moved from the
13 Palms to Emerald Hills?

14 THE WITNESS: From the Palms to Emerald Hills we -- we
15 saw a little bit. We saw a little decline, a little
16 reclusiveness. Um, we had had a prescription but it was
17 never given to her. Um, the doctor prescribed a medication
18 that was supposed to lower anxiety if needed but it was
19 never given to her. But we did see, you know, kind of a
20 loss of appetite for the first day, couple of days. And I
21 think there was a little -- she kind of withdrew a little
22 bit but a couple of days she was a little bit better. So we
23 were optimistic everything was on the right path.

24 THE COURT: The jury has heard testimony regarding the
25 resident admission packet.

26 Could you please explain to the jury what documents
27 were contained within the resident admission packet that you
28 received?

1 THE WITNESS: Um, I'm not sure. It was a big packet.
2 I -- I think we went over 15 pages or --

3 THE COURT: Question was not what you went over, the
4 question is what was in it?

5 THE WITNESS: Um, that was kind of the understanding
6 between our family and Emeritus, um, you know, what would be
7 provided, um --

8 THE COURT: Could you name the types of documents that
9 were in it? For example, was the contract that you signed
10 in that packet?

11 THE WITNESS: Okay. Now I'm really confused. Um,
12 that is what I thought we were talking about was the
13 contract.

14 THE COURT: Okay. Well, the jury has heard the phrase
15 "resident admission packet." They don't know what's -- or
16 at least this one juror is not sure what was actually in the
17 packet.

18 What documents were in the packet?

19 THE WITNESS: Okay. So maybe the packet was more the
20 stuff that Melissa Gratiot gave, a folder with the brochures
21 that were -- that is what I would refer to as a packet. The
22 brochures, um, there was a cost break down of -- of the cost
23 for the different size apartments, um, if -- is that what we
24 are --

25 THE COURT: Was the contract in it for you to review?

26 THE WITNESS: No.

27 THE COURT: Okay.

28 THE WITNESS: No. Yes, this would have all been

1 marketing materials.

2 THE COURT: Okay. So when did you get the contract to
3 review?

4 THE WITNESS: Um, just the day -- that end of August,
5 August 29th, um, I went in to meet with Nancy and just
6 signed the admission agreement and the paperwork that she
7 needed.

8 THE COURT: Okay. So then turning your attention
9 first to the resident admission packet that Melissa Gratiot
10 gave you.

11 Did Melissa go over any of the information that was
12 actually contained in the documents in that packet with you?

13 THE WITNESS: Melissa didn't give me the resident
14 admission document. That -- that would have come from Nancy
15 Cordova.

16 THE COURT: Okay. Did Nancy Cordova go over any of
17 the documents with you?

18 THE WITNESS: We, um -- no. She just kind of flipped
19 the pages and, you know, Put your signature there. She
20 goes, We just got to get signatures on these. And -- and
21 I've done that before so that wasn't -- that's fine. She --
22 I think she may have asked, Do you want to, you know, go
23 word-for-word and I said, I'm -- I'm trusting. Hindsight,
24 shouldn't have. Um, but I said, yeah, just show me where to
25 sign and what I need, you know, and we did. And the
26 documents that we took home she said, Just get a signature
27 on there and get them back to me whenever.

28 THE COURT: At any time during your mother's stay at

1 Emerald Hills did Nancy Cordova reference any of the
2 information found in this packet to remind you of Emerald
3 Hills' policies?

4 THE WITNESS: No, not at all.

5 THE COURT: Did Peggy Stevenson ever reference any of
6 the information found in this packet to remind you of
7 Emerald Hills' policies?

8 THE WITNESS: That one's easy because I never talked
9 to her except one time; no.

10 THE COURT: Okay. So now I'm going to ask you the
11 question with regard to the contract documents that were
12 signed.

13 Did Nancy Cordova ever reference any of the
14 information found in the contract documents to remind you of
15 Emerald Hills' policies?

16 THE WITNESS: I'm sorry, can you read that one more
17 time?

18 THE COURT: Did Nancy Cordova ever reference any of
19 the information found in the contract documents to remind
20 you of Emerald Hills' policies?

21 THE WITNESS: She highlighted a few things, um, but --
22 are you -- on the day that we signed the documents?

23 THE COURT: Any time?

24 THE WITNESS: Yeah. Only on the day that we signed
25 on -- on -- at the end of August, um, she just highlighted
26 certainly the amenities and the -- the things that we were
27 going to be, um, gaining by having my mother there, such as
28 the one-on-one care, um, you know, um, you know, the -- the

1 transportation issues, stuff like that she would highlight.

2 THE COURT: Did Peggy Stevenson ever reference any of
3 the information in the contract document to remind you of
4 Emerald Hills' policies?

5 THE WITNESS: No.

6 THE COURT: Did you ever put in writing a request that
7 Emerald Hills contact you or your wife first regarding any
8 changes in your mom's condition?

9 THE WITNESS: I'm not sure. I want to say my wife had
10 sent an e-mail or two. It was one of the reasons she asked
11 for -- she wanted to see the care logs on our November 17th
12 meeting that they could not produce. She goes, Oh, yeah, we
13 have those. We never saw them. Um, we asked for a lot of
14 things that day. But, um, the care logs would have shown
15 are these instructions being passed from one shift to
16 another.

17 THE COURT: No. This -- maybe I was not clear in my
18 question.

19 Did you ever put in writing a request, just a standing
20 request, that Emerald Hills contact you or your wife first
21 regarding any change in your mom's condition?

22 THE WITNESS: I'm not sure.

23 THE COURT: Okay. Thank you.

24 Ms. Clement?

25 MS. CLEMENT: Yes.

26 FURTHER REDIRECT EXAMINATION

27 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
28 the Plaintiffs:

1 Q Eric, can you tell the jury what, if anything, your
2 dad did ask of you regarding health care decisions?

3 A Yeah. My dad, um, valued certainly Kathleen's and my
4 opinion on health care and many times, you know, my sister
5 and my brother, he -- he sought out advice. Hey, you know,
6 what do you think we should do regarding this or what should
7 I do?

8 We accompanied them on many -- especially when my dad,
9 after my wife -- after my mother passed, um, he needed -- he
10 had some health care issues and my brother flew out for that
11 and my sister and we went to doctor meetings with him for
12 that. He wanted that, for us to all be hearing the same
13 thing.

14 Q Can you tell the jurors when you moved your mother's
15 furniture out of Emerald Hills?

16 A It was after my brother flew out, which was the
17 following week. Um, I don't recall the exact day, but it
18 was probably eight or nine days after my mom had, um, left
19 the facility.

20 MS. CLEMENT: Thank you, Eric.

21 FURTHER RECROSS-EXAMINATION

22 By BRYAN R. REID, Attorney at Law, Counsel on behalf of the
23 Defendant:

24 Q Other than any conversations you have had with your
25 attorneys, um, during the break did you discuss your
26 testimony or any answers with anybody?

27 A No.

28 Q With regard to changing that response, the date that

1 those pictures were taken, do -- you said that, um -- you
2 said you looked at something to confirm that the pictures
3 were taken on December 8th. What did you look at?

4 A The hard copies that we have.

5 Q Hard copies of what?

6 A Well, not the hard -- on our computer there is a thing
7 you can do to drop down file, um, created -- when it was
8 created.

9 Q Did you ever print that out and give it to anybody?

10 A No.

11 Q So those photos are still on your computer?

12 A I have no idea. I have not looked at those -- those
13 are extremely upsetting to me. I --

14 Q Well, who was the one who went to the computer to
15 check the date?

16 A Um, that would have been me.

17 Q Okay. And so is that information still on your
18 computer?

19 A I don't know.

20 Q Um, now, your recollection is that the bill that you
21 were getting from Emerald Hills got up to \$12,000?

22 A Yeah. I think it was like three months worth of rent.

23 Q Did -- was there ever a time that any of that amount
24 was paid to Emerald Hills?

25 A No.

26 Q You weren't taken to collections or anything like
27 that, were you?

28 A I think we were threatened, but I don't think it

1 actually got there.

2 MR. REID: That is all I have. Thank you.

3 THE COURT: Anything else, Ms. Clement?

4 MS. CLEMENT: No.

5 THE COURT: All right. May this witness step down?

6 MS. CLEMENT: Yes.

7 MR. REID: Yes, your Honor.

8 THE COURT: Thank you very much, sir.

9 THE WITNESS: Thank you.

10 THE COURT: Who is our next witness?

11 MS. CLEMENT: For our next witness we are going to
12 view the video testimony of Melanie Werdel, the executive
13 vice president of administration of Emeritus. It's about 14
14 minutes, your Honor.

15 THE COURT: All right. Ladies and gentlemen, as you
16 know, testimony that is shown to you by video is the same as
17 testimony that would otherwise be in the courtroom.

18 Terrance, can I give you this, please?

19 COURT ATTENDANT: Yes, ma'am.

20 THE COURT: Can you spell Melanie Werdel's name,
21 please, for the record?

22 MS. CLEMENT: Yes. M-e-l-a-i-n-i-e W-e-r-d-e-l.

23 THE COURT: And she is the executive vice president...

24 MS. CLEMENT: Of administration at Emeritus Seattle.

25 THE COURT: Okay. Thank you. Get the lights.

26 /////

27 /////

28 /////